

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN

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4 UNITED STATES OF AMERICA,)
5) Case No. CR 11-135
6 Plaintiff,) Milwaukee, Wisconsin
7 vs.) August 21, 2012
8) 8:30 a.m.
9 ARVIND AHUJA,)
10) **VOLUME 5**
11 Defendant.) PAGES 880-1047
12 -----

13 **TRANSCRIPT OF JURY TRIAL**
14 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
15 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

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Proceedings recorded by computerized stenography,
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1 P R O C E E D I N G S (8:41 a.m.)

2 THE COURT: Case No. 2012-CR-135, United States vs.
3 Arvind Ahuja. Please state your appearances for the record.

4 MR. SULLIVAN: John Sullivan, Melissa Siskind, Tracy
5 Johnson, and Special Agent Geoffrey Cook for the United States.

6 THE COURT: Good morning.

7 MR. SULLIVAN: Good morning.

8 MR. WEBB: Your Honor, Dan Webb, Tom Kirsch, and
9 Shannon Allen are present and so is the defendant, Dr. Ahuja.

10 THE COURT: Good morning to all of you as well.

11 Yesterday we had argument on the defendant's motion
12 for a judgment of acquittal, and the government responded to
13 that motion orally. After we ended our formal session I
14 reviewed the materials on file and considered the evidence in
15 the record and shared with the parties informally what the Court
16 envisioned this morning.

17 I also gave to the government an opportunity to review
18 the record and to determine whether or not it wishes to cite any
19 additional materials in the record which support the
20 government's belief that it has demonstrated beyond a reasonable
21 doubt that the defendant is guilty of all the remaining charges
22 in this case.

23 The Court further noted and placed on the docket its
24 determination respecting one of the instructions that the
25 defendant requested; that is, a missing witness instruction.

1 The Court advised with respect to the instruction that it will
2 not give a missing witness instruction and cited *U.S. vs.*
3 *Disantis* as the basis for that decision. I also took into
4 account the case law that has cited to *Disantis* and the basis
08:44 5 for the defendant's claim that a missing witness instruction is
6 warranted, particularly with regard to two of the employees of
7 HSBC which the Court concluded are not in the control of the
8 United States or available to testify in this case.

9 With that said, I turn to the government to inquire
08:44 10 whether or not it wishes to be heard further.

11 MS. SISKIND: Your Honor, we do not have anything
12 further to submit on the 2006 tax year. We have found case law
13 regarding -- that supports Your Honor's statements on the
14 telephone conference yesterday evening regarding the 2007, 2008,
08:44 15 and 2009 tax years, cases specifically dealing with what kind of
16 evidence supports willfulness in an FBAR case and how the
17 statement on the Schedule B is a fact from which the Court can
18 infer willfulness. And I provide those cases to the Court.

19 THE COURT: If you wish to place them in the record,
08:45 20 it would be certainly something that would provide further
21 grounds for the government's view that it has satisfied its
22 burden of proof.

23 MS. SISKIND: The first case, Your Honor, is generally
24 about the significance of a signature on a tax return. It's
08:45 25 *United States vs. Harper*, which is 458 F.2d 891, beginning at

1 page 894. It's a Seventh Circuit case from 1972 which speaks
2 generally about what kind of inferences can be drawn from a
3 signature on a tax return. The case says, "While it is true
4 that proof of a signature alone on a tax return is insufficient
08:45 5 by itself to make knowledge of the contents of that return
6 attributable to the signer, it is equally true that knowledge
7 may be inferred from the facts and circumstances of the case and
8 that the signature at the bottom of the return is prima facie
9 evidence that the signer knows of the" -- "knows the contents of
08:46 10 the return."

11 We would point the Court to two cases specifically
12 dealing with failures -- with willful failures to file FBARs.

13 The first case is *United States vs. Sturman*,
14 S-T-U-R-M-A-N. It's 951 F.2d 1466. It's a Sixth Circuit
08:46 15 opinion from 1991. And I would direct the Court starting at
16 page 1476. The court concludes that in that case there was
17 ample evidence of willfulness with respect to an FBAR charge,
18 based on the fact first that the defendant concealed his foreign
19 bank accounts, and second that there was a statement on
08:46 20 Schedule B regarding the FBAR requirement specifically directing
21 the signer of the return to the instructions for the FBAR.

22 The other case I would cite to the Court is *United*
23 *States vs. Williams*, 2012 Westlaw 2948569, a Fourth Circuit
24 opinion from 2012. And that case talked about evidence from
08:47 25 which willfulness may be inferred regarding the FBAR, and it

1 speaks specifically of the defendant's signature on a tax return
2 as being prima facie evidence that he knew the contents of the
3 return, and at a minimum, line 7a's directions to see
4 instructions for exceptions and filing requirements for Form TDF
08:47 5 90-22.1. And the court found that that statement in the tax
6 return that the defendant had signed put the defendant on notice
7 of the FBAR requirement.

8 And the court goes on to note in that opinion that
9 there is nothing in the record indicating the defendant ever
08:47 10 consulted those instructions or followed what the form said.
11 The mere fact that he signed the return, that the return
12 contained instructions to go and review the FBAR, was sufficient
13 to establish his knowledge of the FBAR requirement and that his
14 failure to file as willful.

08:48 15 THE COURT: Does the defense wish to be heard further?

16 MR. KIRSCH: Your Honor, just briefly. First of all,
17 you *U.S. vs. Williams* is a civil case.

18 Your Honor, we filed this morning and I sent to your
19 law clerk a supplemental brief citing supplemental authority for
08:48 20 our points for the 2007 and 2008 tax years. I have a copy that
21 I can hand up to the Court.

22 THE COURT: Please. Ordinarily, just so that you know
23 what our local rules provide, when something is submitted at the
24 last minute a hard copy should be delivered to chambers. In any
08:48 25 event, I invite the submission.

1 (Document tendered to the court.)

2 THE COURT: I assume the government has seen the
3 submission and that was one of the reasons for citing the case
4 law that you just referenced?

08:49 5 MS. SISKIND: That is correct, Your Honor.

6 THE COURT: Well, I'm satisfied the government has --

7 MR. KIRSCH: Your Honor, can I make a record on one
8 point?

9 THE COURT: Yes.

08:50 10 MR. KIRSCH: I'd just like to make -- first of all, I
11 think we generally agree with the law, Your Honor. In fact, we
12 submitted to the Court last night a supplemental instruction on
13 this law.

14 But, Your Honor, if the Court looks at page 3 of my
08:50 15 brief, this is the critical paragraph with respect to 2007 and
16 2008. Your Honor, the issue here is the evidence with respect
17 to 2007 and 2008. The government just stated and the law is
18 unequivocally clear that signing the tax return by itself is not
19 enough to find willfulness under the law. It's not enough by
08:50 20 itself.

21 Mark Miller -- if the Court looks at Paragraph 3 of my
22 brief, Mark Miller -- and the government has not responded to
23 this. This is undisputed. Mark Miller did not testify that
24 Arvind Ahuja ever received a tax return for -- or tax organizer
08:51 25 for '06, '07, or '08.

1 THE COURT: I'm certainly mindful of that, and in
2 fact, that was part of the discussion that we had yesterday.

3 But I have concluded at the very least the government
4 has failed to prove its case against the defendant with regard
08:51 5 to tax year 2006. The defendant's motion is therefore granted
6 and Count 6 of the superseding indictment is dismissed.

7 With regard to the balance of the indictment, the
8 Court will maintain that under advisement. And I do so because
9 I want to get to the testimony that may be offered, and I'll
08:52 10 give you a chance to be heard further with respect to these
11 matters after I've had a chance to review the case law that
12 you've submitted and can at that point in time take into account
13 the particulars of the authorities that you rely upon and any
14 additional argument that may be appropriate.

08:52 15 MR. KIRSCH: Thank you, Your Honor. We're ready to
16 proceed with our first witness whenever the court is so
17 inclined.

18 THE COURT: All right. Bring in the jury, please.

19 (Jury in at 8:53 a.m.)

08:53 20 THE COURT: Good morning all.

21 THE REPORTER: Raise your right hand, please.

22 JENNIFER ANN BECK, DEFENSE WITNESS, SWORN

23 THE REPORTER: Please state your name and spell your
24 name for the record.

08:53 25 THE WITNESS: Jennifer Ann Beck, J-E-N-N-I-F-E-R,

1 A-N-N, B-E-C-K.

2 MR. KIRSCH: May I proceed, Your Honor?

3 THE COURT: You certainly may.

4 DIRECT EXAMINATION

08:53 5 BY MR. KIRSCH:

6 Q. Good morning, Ms. Beck.

7 A. Good morning.

8 Q. Ms. Beck, to explain why you're here, yesterday in court,
9 court proceedings yesterday --

08:54 10 THE COURT: Just ask the question, please.

11 MR. KIRSCH: Yes, Your Honor.

12 BY MR. KIRSCH:

13 Q. Ms. Beck, to explain why you're here, will you tell the jury
14 where you're employed?

08:54 15 A. I'm employed at Tuckaway Country Club. It's a private club
16 in Franklin, Wisconsin.

17 Q. And what is your position at Tuckaway Country Club?

18 A. I'm the general manager.

19 Q. How long have you been there?

08:54 20 A. Five years.

21 Q. Is Dr. Arvind Ahuja a member of Tuckaway Country Club?

22 A. Yes, he is.

23 Q. Will you explain to the jury what Tuckaway Country Club is?

08:54 24 A. Tuckaway Country Club is a private club. We have 18 holes
25 of golf, a swimming pool, tennis courts, and a clubhouse, and

1 it's a private membership.

2 Q. Was Dr. Ahuja a member of the club in June of 2009?

3 A. Yes, he was.

4 Q. What's the significance of it being a private club?

08:55 5 A. Private club means that it's not open to the public. So in
6 order to be a member, you have to go through different -- a
7 different membership application and then you have the rights to
8 the club.

9 Q. As the general manager, are you familiar with the club's
08:55 10 policy about guests using the club and playing golf at the club?

11 A. Yes, I am.

12 Q. Is it permitted?

13 A. Yes, it is.

14 Q. If a member brings a guest, is there a charge for the guest
08:55 15 to play golf, commonly referred to as a greens fee?

16 A. Correct. Sometimes it's a greens fee, sometimes it's a
17 guest fee, but there's always a charge.

18 Q. There is a fee.

19 A. Uh-huh.

08:55 20 Q. And I want to call your attention to June of 2009. And I
21 want to ask you, what was the fee for a guest to play golf at
22 Tuckaway Country Club in June of 2009?

23 A. \$85. And that was for the green fee and cart fee combined.

24 Q. Now, if a member brings a guest to play golf at Tuckaway, is
08:56 25 the member or guest able to pay for the guest's golf fee or

1 green fee by cash or credit card?

2 A. No.

3 Q. Is your country club known as what's called a noncash club?

4 A. Correct.

08:56 5 Q. What does that mean?

6 A. It means that all charges that a member would have has to
7 flow through their account.

8 Q. Ms. Beck, did I ask you to bring a record with you today
9 when you came to testify?

08:56 10 A. Yes.

11 MR. KIRSCH: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MR. KIRSCH:

14 Q. Before I do, for the record, Ms. Beck, I'm going to hand you
08:56 15 what I've marked as Defense Exhibit 2204 and ask you if you
16 recognize this document.

17 A. Yes, I do.

18 Q. Is that the record that you brought with you today pursuant
19 to my request?

08:57 20 A. Yes.

21 MR. KIRSCH: Your Honor, I move to admit Exhibit 2204.

22 MS. SISKIND: No objection.

23 THE COURT: It's received.

24 (Exhibit 2204 received in evidence.)

08:57 25 MR. KIRSCH: And I ask it be published, James, for the

1 jury.

2 BY MR. KIRSCH:

3 Q. Ms. Beck, you have a record in front of you, but there's
4 also going to be a record on the screen. So whichever is more
08:57 5 handy, you can refer to that while I'm asking you questions.

6 Will you explain to the jury what this document is?

7 A. This is a statement that is issued monthly to the member,
8 and it states all the charges and any payments that the
9 individual has made.

08:57 10 Q. Now, I'd like to --

11 MR. KIRSCH: James, can you highlight the statement
12 date and the member number? Right up here.

13 BY MR. KIRSCH:

14 Q. Okay. Ms. Beck, whose account is this?

08:58 15 A. This is Dr. Ahuja's.

16 Q. And do you see the statement date there that's highlighted
17 on the screen of June 30th, 2009?

18 A. Yes.

19 Q. So for what months are charges reflected on this statement?

08:58 20 A. June of 2009.

21 Q. I'd like to just walk through the statement very quickly
22 with you. Do you see the entry of a beginning balance on
23 June 1st and then a payment on June 23rd; do you see that?

24 A. Yes, I do.

08:58 25 Q. Were those charges and payment for expenses incurred in May

1 of 2009, or at least prior to June 1st of 2009?

2 A. Prior to June 1st.

3 Q. Now, then you see a charge called "minimum spending" for
4 \$175 -- \$170.50; do you see that?

08:58 5 A. Yes.

6 Q. I want to talk about that in one minute. But first I'm
7 going to ask you, by looking at this document, can you determine
8 from this record whether or not Dr. Ahuja brought a guest to
9 play golf at Tuckaway Country Club in June 2009?

08:59 10 A. From this statement, I can tell you that Dr. Ahuja did not
11 use the club at all or play golf in 2009, June of 2009.

12 Q. And, first, with respect to the golf, you can see that
13 because there's no charge for \$85; is that correct?

14 A. Correct.

08:59 15 Q. If Dr. Ahuja had been charged a guest fee, it would appear
16 on that statement, correct?

17 A. Correct.

18 Q. Now, you see a monthly minimum charge for \$170.50?

19 A. Yes.

08:59 20 Q. Will you explain to the jury what that reflects?

21 A. That is unspent -- it's an unspent amount that the member is
22 charged. So in a quarter a member has to spend at least \$300 in
23 food and beverage dining at the club. And because Dr. Ahuja did
24 not spend that, he was charged what the balance of the \$300,
09:00 25 which is 170.50.

1 Q. So that means in the second quarter of 2009, which would be
2 April, May, and June, members have to spend a minimum of \$300.

3 A. Correct.

4 Q. And because Dr. Ahuja did not meet his minimum by June 30th,
09:00 5 he was charged for the balance; is that right?

6 A. Correct.

7 Q. Does the monthly minimum -- can guest fees count toward the
8 monthly minimum?

9 A. Ours is a quarterly minimum.

09:00 10 Q. I'm sorry.

11 A. And, no, guest fees -- it's only food and beverage. No
12 guest fees.

13 Q. So, Ms. Beck, from looking at this record, can you tell
14 whether Dr. Ahuja had any charges while at the club in June of
09:01 15 2009?

16 A. There were absolutely no charges in June of 2009.

17 MR. KIRSCH: Your Honor, may I have one minute?

18 THE COURT: Certainly.

19 (Defense counsel confer.)

09:01 20 BY MR. KIRSCH:

21 Q. Ms. Beck, I just have a few more questions. Do you see
22 Dr. Ahuja's address on the statement there?

23 A. Yes.

24 Q. In Greendale, Wisconsin?

09:01 25 A. Correct.

1 Q. Are you aware that that's approximately five to ten
2 minutes -- the country club is approximately five to ten minutes
3 away from that house?

4 A. Correct.

09:01 5 MR. KIRSCH: I have no further questions, Your Honor.

6 THE COURT: Cross?

7 MS. SISKIND: Government has no questions for this
8 witness.

9 THE COURT: Thank you very much. You may step down.
09:01 10 You can leave it there.

11 THE WITNESS: Okay.

12 (Witness excused at 9:01 a.m.)

13 THE COURT: Does the defense have any additional
14 witness at this time?

09:02 15 MR. WEBB: Your Honor, we do not. We rest our case
16 and are ready to proceed.

17 MR. KIRSCH: Your Honor, we actually --

18 MR. WEBB: We have to offer exhibits.

19 MR. KIRSCH: We actually have some exhibits to offer
09:02 20 that have been used in the course of the trial, Your Honor.

21 For the record, defense moves to admit Defense
22 Exhibit 2214, 2233, 2234, 2235, and 2236.

23 THE COURT: Is there any objection?

24 MS. SISKIND: I'm not sure what those are, Your Honor.

09:02 25 MR. KIRSCH: Your Honor, if I can confer for one

1 minute, I can show her my list.

2 THE COURT: All right. Go ahead.

3 (Counsel confer.)

4 MS. SISKIND: No objection.

09:02 5 THE COURT: They're received.

6 (Exhibits 2214, 2233, 2234, 2235, and 2236 received in
7 evidence.)

8 THE COURT: Does the government have additional
9 witnesses?

09:03 10 MR. SULLIVAN: Nothing further, Your Honor.

11 THE COURT: I apologize to the jury. I didn't give
12 you a chance to ask questions of the witness.

13 That concludes the evidence in the case.

14 Members of the jury, would you please return to the
09:03 15 jury room at this time.

16 THE BAILIFF: All rise.

17 (Jury out at 9:03 a.m.)

18 THE COURT: Please be seated.

19 Are there additional matters that need to be addressed
09:04 20 before we turn to the subject of instructions?

21 MS. SISKIND: Your Honor, the only issue is that once
22 it's decided which counts are going to go to the jury we just
23 want to make sure everyone is on the same page which count is
24 which count number so that everything is clear.

09:04 25 MR. KIRSCH: Your Honor, I think with respect to the

1 jury instructions, without waiving our objections made
2 yesterday, yesterday we submitted a set of final instructions to
3 the court which, I think, reflects the court's ruling and
4 accurately -- I think it accurately reflects the court's rulings
09:04 5 on the issues with respect to the jury instructions.

6 And we submitted last night to the court a
7 supplemental instruction, and I have that. I didn't put a
8 number on it, Your Honor, because I didn't know where you wanted
9 to fit it into the instructions so I didn't put a number on it.

09:05 10 But other than that, without waiving the objections we
11 made previously, I think you have all the jury instructions that
12 the parties -- that reflect your rulings.

13 THE COURT: Have you gone over those instructions with
14 the government?

09:05 15 MR. KIRSCH: Oh, yes, Your Honor. I think --
16 Ms. Siskind -- we worked hard on these yesterday. And
17 Ms. Siskind sent those to the court by PDF last night.

18 We have not received the court's final version, but
19 we've sent you what we think is our final version, which
09:05 20 reflects the court's rulings.

21 THE COURT: I just got a note from my JI saying that
22 there are no jury instructions in the post office box. Did you
23 e-mail them to our PO?

24 MS. SISKIND: Your Honor, we e-mailed them to
09:05 25 Ms. Granville.

1 MR. KIRSCH: I also printed a set, if the court wants.
2 I only brought one set with me, Your Honor, but I can hand this
3 up, if you want it. If you want to make a photocopy, whatever
4 you want, I have it.

09:05 5 THE COURT: One second.

6 (Brief pause.)

7 THE COURT: No. She did not receive it. So why don't
8 we take a few moments to see what has happened to the
9 instructions. And if you have a hard copy, I'll look at what
10 you have in hard copy, but we will need them in electronic form
11 so that they can be finalized.

12 MS. SISKIND: Your Honor, is there a better e-mail
13 address to use to make sure --

14 THE COURT: We have what's called a post office box
15 where all formal filings are supposed to go.

16 (Document tendered to the court.)

17 THE COURT: I would like to meet with counsel in my
18 conference room, and we can go over any of the details that need
19 discussion. And once we know exactly which direction we're
20 going, we'll place things on the record.

21 At this point in time, have the parties revised their
22 estimate of how much time they need to argue?

23 MR. SULLIVAN: For the government, Your Honor, the
24 closing should be probably 35 minutes and the rebuttal probably
09:08 25. So we've come down.

1 THE COURT: I duly note you have.

2 Mr. Webb?

3 MR. WEBB: Your Honor, I really haven't come down. I
4 stayed up pretty much all night trying to cut back on this. I'm
09:08 5 going to do it as fast -- as efficient as I can. There's a lot
6 of documents in evidence I need to explain. It's going to be
7 somewhere between an hour and a half and two hours. I tried to
8 bring it down as best I can. I'm going to continue to do that.
9 As I listen to the government's case, I may be able to cut back
09:08 10 some. And so I'm going to work very hard at it, Your Honor.

11 THE COURT: All right. I want you to do what you have
12 to do to get your points across to the jury, but I also want you
13 to be as efficient as possible.

14 We'll take a brief break and I'll meet you in the
09:08 15 conference room.

16 THE BAILIFF: All rise.

17 (Recess taken at 9:09 a.m., until 11:49 a.m.)

18 THE COURT: Be seated, please.

19 I have released the jury until 1:00 o'clock. That way
11:49 20 the arguments of counsel will not be split.

21 You've also been handed copies of the instructions,
22 the superseding indictment with modifications, and the verdict
23 form.

24 It has come to my attention that there was a
11:50 25 typographical error in the superseding indictment with respect

1 to Schedule B.

2 Do the parties wish to be heard respecting the same?

3 MR. SULLIVAN: Yes, Your Honor. It would be
4 considered surplusage. But the parties have agreed that we're
11:50 5 going to change Part II to Part III because it doesn't affect
6 the line item and the schedule.

7 So with the consent of the defense, we would go and
8 change it to Part III.

9 THE COURT: You ask that the indictment be amended to
11:50 10 modify the language referring to that portion of Schedule B
11 where information is requested of the taxpayer.

12 MR. SULLIVAN: Yes. It originally said, "Schedule B,
13 Part II, line 7a." It should be, "Schedule B, Part III,
14 line 7a."

11:51 15 THE COURT: Mr. Webb?

16 MR. WEBB: Yes, Your Honor. I noticed this this
17 morning.

18 I understand the government's going to do what they
19 just said they're going to do, which is, I guess, to amend the
11:51 20 indictment because of some error.

21 What I don't know, and I've had no time to look at, is
22 whether I have any rights because it's not being done by the
23 grand jury.

24 I don't want to relinquish that right, but I don't
11:51 25 want to hold up these proceedings. If the government is

1 confident that the law is clear on this, I'm ready to go
2 forward. But I'm not going to just sit here and relinquish some
3 right that I have.

4 The government's, I think, position is that this is a
11:51 5 typographical error, and that the case law would allow them to
6 do this without going back before the grand jury. I'm not in a
7 position to dispute the case law, but I'm not in a position to
8 agree to it because I just don't know.

9 THE COURT: You're not stipulating.

11:51 10 MR. WEBB: I'm not stipulating.

11 THE COURT: All right. I note the government request.
12 I am satisfied that the reference to Part II of Schedule B is
13 erroneous; it is not substantive; it appears to be a
14 typographical error only. And, therefore, I do order that the
11:52 15 superseding indictment be amended to refer to Schedule B,
16 Part III, line 7a. And we'll proceed accordingly.

17 Now, with regard to the verdict form, is there any
18 disagreement with the verdict form as now crafted?

19 MS. SISKIND: Not from the government, Your Honor.

11:53 20 MR. KIRSCH: Yes, Your Honor.

21 There is one -- it looks like just a typographical
22 error.

23 Count 1, 2, 3, and 4 say "not guilty" first and then
24 "guilty," which is the way it should be, but 5, 6, and 7 say
11:53 25 "guilty" first and "not guilty" second. So they need to be

1 consistent, I think, Your Honor.

2 THE COURT: Absolutely. So they will be flipped.

3 5, 6, and 7, where a verdict is requested, will be
4 flipped.

11:53 5 Is there anything else?

6 That's why I like to have multiple sets of eyes on
7 these documents.

8 MR. KIRSCH: No, Your Honor, nothing else that we
9 could see.

11:53 10 JURY INSTRUCTION CONFERENCE

11 THE COURT: All right. With regard to the
12 instructions, are there any objections to the instructions or
13 corrections that should be made?

14 I'll first direct the question to the government.

11:54 15 MS. SISKIND: No, Your Honor.

16 THE COURT: Mr. Kirsch?

17 MR. KIRSCH: Your Honor, without repeating our prior
18 exceptions, which we'd like to preserve for the record, we have
19 no objections to these instructions, subject to that.

11:54 20 THE COURT: Would you just reiterate your objections
21 so that the record will contain the essential arguments all at
22 one portion of the transcript?

23 MR. KIRSCH: Your Honor, I don't have them all with
24 me. I know --

11:54 25 THE COURT: Just generally.

1 MR. KIRSCH: I know that we had -- well, first of all,
2 we object to the jury being instructed on Counts 7 -- let me
3 just say the years.

4 THE COURT: You moved to dismiss Counts 7 -- actually,
5 you filed a motion for a judgment of acquittal.
11:54

6 With respect to any count that was subject to your
7 judgment of acquittal, you are asserting that there should be no
8 instruction. Correct?

9 MR. KIRSCH: Yes, Your Honor.

10 Just so the record is clear, we think there should be
11 a judgment of acquittal on all counts of the superseding
12 indictment.
11:55

13 What we discussed this morning and raised this morning
14 is a judgment of acquittal on -- the principal argument dealt
15 with the FBAR violations for 2007 and 2008.
11:55

16 And I think the government and the defendant disagree
17 over the issue of the knowledge and circumstances. The defense
18 position is that goes to knowledge of the FBAR requirement, not
19 just knowledge and circumstances generally of the case.

20 THE COURT: That's duly noted. And as indicated in
11:55 21 chambers and yesterday, as well as earlier this morning, the
22 Court is taking these matters under advisement. Hence, it is
23 appropriate that the jury be instructed to deliberate with
24 respect to all of the remaining counts.

11:56 25 Is there anything else?

1 MR. KIRSCH: Your Honor, there was -- I'm looking
2 through these very quickly. There was the punishment
3 instruction that we had objected to.

4 THE COURT: I believe that was corrected to include an
5 instruction that referenced Mr. Bhasin as well as the defendant.
11:56

6 MR. KIRSCH: That's correct, Your Honor. But we
7 would -- we don't think that instruction should be given at all.
8 We agree with the correction, but we still think the punishment
9 instruction should not be given. And of course, we object, the
10 missing witness instruction we want to preserve that objection.
11:56

11 THE COURT: That is duly noted and it is again noted
12 here.

13 MR. KIRSCH: And we objected to Instruction Number 22.
14 And, Your Honor, I'm going through it very quickly, but I think
15 that's it. I think all the other instructions we were able to
11:57 16 work out.

17 THE COURT: Well, take a couple of moments so that you
18 don't have to rush. If there is something else that needs to be
19 noted, I'd like to have it noted before we break and before the
11:57 20 jury gets back because when they return I would like for the
21 arguments to begin.

22 MR. KIRSCH: There's nothing that I can think of,
23 Your Honor.

24 THE COURT: Do you want to take a few more minutes?

11:57 25 MR. KIRSCH: No, I don't think I have to. I don't

1 want to waive the arguments that I made yesterday with respect
2 to the instructions.

3 THE COURT: You're not waiving any arguments. As I
4 said, your arguments have been preserved. But for the sake of
11:57 5 the record and to assist in review of the record, it would be
6 helpful to have everything at one point in the record.

7 MR. KIRSCH: Your Honor, there's nothing else.
8 There's nothing else.

9 THE COURT: Does the government wish to say anything
11:58 10 with respect to the instructions that were just mentioned by
11 Mr. Kirsch?

12 MS. SISKIND: Your Honor, as to the instruction
13 regarding punishment, as we stated yesterday, we believe that's
14 appropriate in light of the cross-examination of Mr. Bhasin
11:58 15 regarding punishment he could have faced if he was not part of a
16 non-prosecution agreement with the government.

17 As to the instruction as to tax loss, as we stated
18 yesterday, that instruction is appropriate because there has
19 been some charts put into evidence, and we expect argument from
11:58 20 the defense on the amount of tax the defendant paid over these
21 years.

22 As to the missing witness instruction, for the reasons
23 we cited in court yesterday, including the *Disantis* case, the
24 missing witness instruction is not appropriate because Priti
11:59 25 Dhanani and Ankush Tandon are in India and outside of the

1 subpoena power of the court.

2 THE COURT: Very well.

3 MR. KIRSCH: Your Honor, can I just have one second?

4 I just want to look up something very quickly.

11:59 5 THE COURT: Absolutely.

6 MR. WEBB: While he's doing that, can I -- yesterday
7 we had the discussion about whether you were going to instruct
8 the jury before or after closing arguments.

9 THE COURT: I will instruct the jury after closing
11:59 10 arguments, and the instructions will be handed out at that time.

11 (Brief pause.)

12 MR. KIRSCH: Your Honor, the -- I just noticed this.
13 Instruction Number 13.

14 THE COURT: All right. Give me a moment. Go ahead.

12:00 15 MR. KIRSCH: The wrong bracketed language was
16 included. Down at the bottom says, "If that statement was made
17 under oath, you may also consider it as evidence of the truth of
18 the matters contained in that prior statement."

19 But what the government is referring to is
12:00 20 Mr. Miller's testimony before the grand jury, but he was not --
21 there's no evidence in the record that he was under oath when he
22 testified before the grand jury.

23 THE COURT: I don't think you need to have specific
24 testimony that he was under oath.

12:01 25 MR. KIRSCH: I'm not sure, then, what you would need.

1 THE COURT: Let me -- would you, Kris --

2 MR. KIRSCH: The objection, Your Honor, is there's no
3 evidence that the statement of Mr. Miller was made under oath.
4 So I think the other bracketed language should be used, not this
12:01 5 bracketed language.

6 THE COURT: Which other language?

7 MR. KIRSCH: Well -- Your Honor, I don't have the
8 pattern instructions with me. It's a Seventh Circuit pattern
9 instruction, and there are two sentences, one for statements
12:02 10 made not under oath and one for statements that were made under
11 oath.

12 THE COURT: I believe you're referring to pattern
13 instruction 3.09 which has two bracketed sections first states,
14 and I quote: "You may not use it as evidence of the truth of
12:03 15 the matters contained in that prior statement."

16 The second, and I quote, reads: "If that statement
17 was made under oath you may also consider it as evidence of the
18 truth of the matters contained in that prior statement."

19 MR. KIRSCH: So, Your Honor, from the transcript, I'll
12:03 20 just read the questions and answers.

21 THE COURT: What page?

22 MR. KIRSCH: Page 645, starting with line 21.

23 "QUESTION: On cross-examination did you indicate that
24 you did not have a very good recollection of the meeting in
12:03 25 August of 2009?

1 "ANSWER: No. That's not what I testified. I said
2 that I had a general recollection of the meeting.

3 "QUESTION: And I'm asking you in August of 2009, did
4 you inform Dr. Ahuja of the FBAR reporting requirements?

12:03 5 "ANSWER: I do not believe that I used the terminology
6 FBAR. I believe that I informed him that there were new,
7 strictly enforced rules and penalties, that failure to report
8 foreign bank and financial accounts can result in substantial
9 penalties.

12:04 10 "QUESTION: And when you testified before the grand
11 jury, Exhibit 78, page 17, line 24, do you recall being asked
12 the following question and giving the following answer?

13 "QUESTION: In August of 2008 you did inform him of
14 the FBAR reporting requirements?

12:04 15 "ANSWER: That is correct.

16 "Do you recall that testimony?

17 "ANSWER: I do.

18 "And when you gave that testimony, Dr. Ahuja was not
19 in the grand jury room, was he?

12:04 20 "ANSWER: That is correct."

21 There's no evidence when the witness made that
22 statement he was under oath, and therefore the jury instruction
23 cannot reflect "If that statement was made under oath, you may
24 also consider it as evidence of the truth of the matters
12:05 25 contained in that prior statement."

1 The government failed to ask Mr. Miller if he was
2 under oath when he testified before the grand jury. So I think
3 the other -- the alternative language needs to be used about a
4 statement that was not made under oath.

12:05 5 THE COURT: Does the government wish to comment?

6 MS. SISKIND: Yes, Your Honor.

7 First, I don't have the commentary to this pattern
8 instruction in front of me so I don't know whether the drafters
9 of the pattern instruction had any comment on whether the fact
10 that the person was under oath has to be elicited at trial.

11 But in any event, that can be remedied in one of two
12 ways: One, we can put into evidence the first few lines of the
13 grand jury transcript where he is sworn in under oath.
14 Alternatively, Your Honor can take judicial notice of the fact
15 that witnesses when they go in the grand jury are under oath.

16 THE COURT: How does the defense respond?

17 MR. KIRSCH: May I have just one moment, Your Honor?

18 THE COURT: Surely.

19 (Defense counsel confer.)

12:06 20 MR. KIRSCH: Your Honor, we think the other sentence
21 ought to be added in addition to this, that -- this last
22 sentence, "If that statement was made under oath, you may also
23 consider it as evidence of the truth of the matters contained in
24 that prior statement," has to stay in the instruction because
12:07 25 Mr. Bhasin was impeached with his grand jury testimony regarding

1 golf at Pebble Beach.

2 And we did ask the appropriate question of whether he
3 was under oath when he made that prior statement, so we've got
4 to have that with respect to Bhasin.

12:07 5 But with respect to Miller, I think the additional
6 sentence should be added that the statement was not made under
7 oath. That's our position.

8 THE COURT: What is your position regarding the Court
9 taking judicial notice of Mr. Miller being under oath when
10 testifying before the grand jury, particularly in light of your
11 acknowledgement that Mr. Bhasin was under oath before the grand
12 jury?

13 MR. KIRSCH: Your Honor, well, I don't know the case
14 law on that. I don't know what the law is, whether the Court is
12:07 15 permitted to take judicial notice of that. So I guess I would
16 just preserve the objection for the record.

17 And I have nothing more to say unless the Court has
18 any questions.

19 THE COURT: All right. Then I will take judicial
12:08 20 notice that grand jury witnesses are under oath. If that is so,
21 then we need to modify one of the instructions, and I believe we
22 should add judicial notice to the instruction -- earlier
23 instruction regarding what is evidence.

24 MR. KIRSCH: Well, Your Honor, I don't -- I don't
12:08 25 believe that's necessary. I don't believe it's necessary to add

1 it to the instruction to complicate things. We respect --

2 THE COURT: But then the jury won't really have a --
3 an understanding as to what the import of judicial notice is.

4 MR. KIRSCH: Can I have one moment, Your Honor?

12:08 5 THE COURT: Certainly.

6 (Defense counsel confer.)

7 THE COURT: Let me note that the proposed
8 instructions, and in particular Number 2, includes the language
9 that I would reinsert if judicial notice is taken.

12:10 10 MR. KIRSCH: Your Honor, our position on judicial
11 notice would be that we would object to the Court taking
12 judicial notice. I think judicial notice are facts like the
13 City of Milwaukee is in Wisconsin. It's a proven fact;
14 everybody knows it. But we don't have any knowledge as to
12:10 15 whether Mr. Miller was actually sworn in that day.

16 THE COURT: Then I will reopen the evidence.

17 MR. SULLIVAN: Government Exhibit 78.

18 MR. WEBB: Does it say he's sworn? I don't have it.

19 MR. SULLIVAN: Yes, it does. Your Honor, on page 3 of
12:10 20 Government Exhibit 78 it says, "Mark Miller, called as a witness
21 herein, having been first duly sworn" --

22 THE COURT: One second. Let me look for the exhibit
23 list. Do you have the exhibit list, Kris?

24 MR. KIRSCH: Your Honor, we'll withdraw our objection.
12:11 25 The transcript does reflect that Mark Miller was duly sworn so

1 we'll withdraw our objection. And Instruction 13 can remain as
2 is and we have no objection and there's no need to take judicial
3 notice of anything.

12:11 4 THE COURT: Very well. For the record, is the
5 government offering 78?

6 MS. SISKIND: Not unless there's a need to, Your
7 Honor, which if the objection is withdrawn there'll be no need
8 to offer it.

9 THE COURT: Very well. We'll proceed accordingly.
12:11 10 Let me just verify several things.

11 Number one, Dr. Ahuja, you've heard considerable
12 discussion respecting whether or not the Court should allow this
13 instruction to be read, and your attorneys have indicated their
14 views with respect to these matters and have withdrawn their
12:12 15 objections to the instruction concerning statements of --
16 inconsistent statements of witnesses.

17 Do you understand what has been said regarding that
18 matter?

19 THE DEFENDANT: Yes, I do.

12:12 20 THE COURT: Do you have any disagreement with your
21 attorneys that you want to place on the record independent of
22 what they've said?

23 THE DEFENDANT: (No response.)

24 THE COURT: Do you disagree with what they've said?

12:12 25 THE DEFENDANT: I'm just thinking through it, sir.

1 THE COURT: All right. I'll give you a few moments to
2 do so.

3 (Brief pause.)

4 THE DEFENDANT: I'm ready.

12:13 5 MR. KIRSCH: We're ready, Your Honor.

6 THE DEFENDANT: I completely agree with them, and I
7 also agree with impeaching Ramit Bhasin.

8 THE COURT: All right, it's noted.

9 Is there anything else we need to address at this
10 point?

11 MR. SULLIVAN: Just one point of clarification,
12 Your Honor. Government counsel will refer to Mr. Miller's
13 testimony as being under oath. And given that that is a fact, I
14 just want to know if the defense is going to object or if that's
12:13 15 appropriate for us to do during argument.

16 MR. KIRSCH: Your Honor, we agree that he was under
17 oath.

18 THE COURT: All right. I will see you at
19 1:00 o'clock.

12:13 20 THE BAILIFF: All rise.

21 (Lunch recess taken at 12:13 p.m., until 1:02 p.m.)

22 THE COURT: One second.

23 MR. WEBB: Your Honor, I was told my client was stuck
24 in the security line. He will be here in one minute.

01:02 25 THE COURT: All right. Be seated.

1 (Brief pause.)

2 THE COURT: Are you now ready?

3 MR. WEBB: We're ready, Your Honor.

4 (Jury in at 1:03 p.m.)

01:03 5 THE BAILIFF: Please be seated.

6 THE COURT: Members of the jury, we are now ready for
7 closing arguments. The government may proceed.

8 MR. SULLIVAN: Thank you, Your Honor.

9 GOVERNMENT CLOSING ARGUMENT

01:04 10 MR. SULLIVAN: May it please the Court, Counsel.

11 MS. SISKIND: The computer, Your Honor?

12 THE COURT: Go ahead.

13 MR. SULLIVAN: Ladies and gentlemen of the jury, good
14 afternoon.

01:04 15 On behalf of the United States of America, I want to
16 thank you for your patience and attention throughout this trial.

17 We're now at the point of the case where you're going
18 to hear closing arguments. And then you're going to get this
19 case, and you're going to have to decide, as charged in Counts 1
01:04 20 through 4, whether the defendant, Dr. Arvind Ahuja, willfully
21 filed false tax returns for tax years 2006 through 2009, and,
22 whether, as charged in Counts 5, 6 and 7, whether the defendant
23 willfully failed to file FBARs for tax years 2007, 2008, and
24 2009.

01:05 25 And at the outset, I want to say I agree with what

1 Ms. Johnson said at the beginning of this case: This is not a
2 complicated tax case. This case is about concealment. It's
3 about false statements. It's about a wealthy doctor who
4 maintained undeclared offshore bank accounts in India and
01:05 5 Jersey; that he had millions and millions of dollars in them,
6 who concealed those accounts and the related income earned in
7 those accounts from his accountant and the IRS, and who, during
8 the relevant years, filed false tax returns and didn't file
9 FBARs that he knew he was required to file under the law.

01:05 10 And what I want to do right now is review with you the
11 elements of the offenses, the things we have to prove, and
12 summarize with you the evidence that we submit proves and
13 establishes those elements beyond a reasonable doubt.

14 And with respect to Counts 1 through 4 there are five
01:06 15 elements that the government has to prove:

16 First: That Dr. Ahuja made a tax return or caused a
17 tax return to be made.

18 There is no dispute that these tax returns were
19 prepared by Mark Miller and filed with the IRS. These are in
01:06 20 evidence as Government Exhibits 12, 13, 14, and 15. And you
21 will get all the evidence when you go back to deliberate.

22 Two: That the return was signed under penalties of
23 perjury. There's no dispute on this issue either.

24 Each of these returns above Dr. Ahuja's signature
01:07 25 states, "Under penalties of perjury, I declare that I have

1 examined this return and the accompanying schedules and
2 statements and, to the best of my knowledge and belief, they are
3 true, correct, and complete."

4 Third: That Dr. Ahuja filed the tax returns or caused
01:07 5 the tax returns to be filed with the IRS.

6 The parties stipulated to this fact. You can even see
7 on these returns that they're file stamped, "received by the
8 IRS."

9 Fourth: That the income tax return was false as to a
01:07 10 material matter.

11 Now, there are two false material matters alleged in
12 the indictment. The first is that Dr. Ahuja failed to report
13 all his income on lines 8A, 9A, and line 22. And those lines,
14 again, are on the very front of these returns.

01:08 15 8A, if you recall, is taxable income -- interest.

16 9A, ordinary dividends.

17 And line 22, total income.

18 It also alleges a second false material matter. And
19 that is on Schedule B of these returns, which is the statement
01:08 20 or schedule for interest and ordinary dividends, Part III of the
21 returns asks about foreign bank accounts. And the indictment
22 alleges that line 7a is false because all these returns are
23 checked "no."

24 For it to be material, it's got to be a matter that
01:08 25 affects the bottom line. Does it affect the tax liability?

1 You heard Mark Miller say, "Had I been told about the
2 defendant's unreported income, I would have added it to the
3 return, and the tax liability would have gone up."

4 So clearly that's a material matter.

01:09 5 On the second part of the return where the foreign
6 bank account question is asked, a line on a tax return that is
7 capable of influencing the verification of the accuracy of the
8 return is also a material matter.

9 There, if you checked the "no" box and you really have
01:09 10 foreign bank accounts, that can affect the IRS's ability to
11 verify the accuracy of the return because they won't know that
12 there are foreign bank accounts, and they won't know whether to
13 try to verify that there's some income in those accounts. So
14 that is also a material matter.

01:09 15 Finally -- and this is where the parties will no
16 doubt -- most of the argument will be -- is that the government
17 has to prove that Dr. Ahuja acted willfully when he made and
18 signed the return.

19 And "willfulness" is defined as a voluntary and
01:10 20 intentional violation of a known legal duty. And the known
21 legal duty here is that, when you sign your return under
22 penalties of perjury saying it is true, correct, and complete,
23 you know you have to report all your income. You know that if
24 you have hundreds of thousands of dollars of taxable interest in
01:10 25 your undeclared foreign bank account, you know that's supposed

1 to go on line 8a. And you know that that's going to flow
2 through to your total income on line 22.

3 So we have to prove that he, Dr. Ahuja, intentionally
4 violated that known legal duty.

01:10 5 There's no issue as to whether it was voluntary.
6 There's no evidence in this case that someone forced Dr. Ahuja
7 to sign these returns.

8 So, with that said, what is the evidence that
9 Dr. Ahuja acted willfully when he signed his tax returns?

01:11 10 First, the evidence shows that Dr. Ahuja handled his
11 own investments during these years. You saw Government
12 Exhibit 58, which is the subscription agreement for the drilling
13 program.

14 And if you recall on the third page of that, there was
01:11 15 some handwriting, and it said, quote, "personally run my own
16 investments." Dr. Ahuja signed that agreement.

17 You also heard testimony that Dr. Ahuja traded a lot.
18 Well, in addition to the testimony, you could look right to
19 Government Exhibit 14, and it speaks for itself.

01:11 20 Dr. Ahuja traded stocks, he traded foreign currencies,
21 he traded futures. And based on this evidence, it is clear that
22 Dr. Ahuja was in charge of his investments during these years.

23 There was also an abundance of evidence showing that
24 Dr. Ahuja knew that he had undeclared bank accounts in Jersey
01:12 25 and India. Just as recently as yesterday you saw all those

1 letters being flashed on the screen. You're going to get those
2 letters when you deliberate. Take a look at them.

3 They're all signed by Dr. Ahuja. They're all very
4 short letters. They all relate to his undeclared offshore
01:12 5 accounts where he's instructing bankers to -- for example, there
6 were three letters directing bankers in India to transfer
7 50 million rupees to something called the Oxus Fund Management,
8 which we know what that is from the testimony of Ramit Bhasin.

9 And when you look at the currency conversion chart,
01:12 10 which is Government Exhibit 91, that's about \$1.2 million.

11 Indicates that he is controlling the accounts.

12 You've also seen that Dr. Ahuja directed bankers in
13 Jersey to deliver a PIN number for his offshore credit card to
14 Ramit Bhasin's address in London. There were also e-mails where
01:13 15 he was trying to increase his credit limit. That will all be
16 with you when you deliberate.

17 There was also another letter directing bankers in
18 India to transfer 5.1 million rupees to make an investment in
19 commercial real estate. That's Government Exhibit 2.

01:13 20 The other three letters were Government Exhibits 3, 4,
21 and 80. And the PIN -- the letter to deliver the PIN to
22 Mr. Bhasin's address was Government Exhibit 32.

23 The letters speak for themselves. Dr. Ahuja exercised
24 control over these undeclared accounts, and those accounts were
01:14 25 located in accounts in India.

1 You've also seen other documents signed by Dr. Ahuja
2 that establish that he was aware that the funds were, in fact,
3 in bank accounts in India. And this is going to be a challenge
4 for you because one of you, hopefully, has really good eyesight.
01:14 5 This is Government Exhibit 20. When we put it on the screen, it
6 was hard to see. But you can see what this says.

7 These are both signed by Dr. Ahuja. They're dated in
8 2005. One is June and one is August. And it says right here,
9 "Option transaction against FCNR deposit with HSBC-India."
01:15 10 \$1.8205 million. The second one is for \$1 million.

11 The whole point of these is that this shows that the
12 money is over in India. And how do we know that? Right at the
13 bottom, account number 7002. We are all familiar with that.
14 And it's right at the bottom here.

01:15 15 And if you want evidence that this was in the Eastern
16 District of Wisconsin at some point in time, there's a fax
17 number at the top of this, area code 414.

18 One year later after these documents were signed,
19 Dr. Ahuja sent an e-mail to one of his bankers asking, quote,
01:15 20 "Is there a CD due June 14th? Thanks. Let me know. Thanks.
21 AA." Government Exhibit 29. This shows that Dr. Ahuja was in
22 charge of his investments, and he was keeping track of them, and
23 he knew what was going on.

24 You also saw that Dr. Ahuja signed the tax declaration
01:16 25 to reduce the amount of tax held -- withheld on his NRO deposits

1 in India. And this, I believe, is Government Exhibit 47.

2 Actually, can we go back to -- yes.

3 I just mentioned NRO deposits. And we know from
4 Ms. Vandana Katju that there were three types of deposits for
01:16 5 accounts that could be maintained over in India, and we're going
6 to get to Exhibit 42 a little later, but that was the
7 application when Dr. Ahuja applied for an NRO savings account,
8 which was taxable. But, if you recall, she testified about
9 those three accounts.

01:17 10 But then she was asked about the tax declaration form,
11 and when she was asked to explain the purpose of this form, she
12 answered, quote: "So if the client said that, you know, they
13 would like to pay the taxes in the United States and they'd like
14 the tax liability in India to be reduced, the only options for
01:17 15 them was to attest on that form."

16 And if we look on the top of that form, it is crystal
17 clear in black and white that it says, "The Hong Kong and
18 Shanghai Banking Corporation, Ltd., Mumbai office, India."

19 Again, this is another document that Dr. Ahuja signed
01:18 20 indicating that he knew that these were accounts located in
21 India.

22 And if you look at the first paragraph, which is in
23 two parts, when Dr. Ahuja signed this form, he specifically
24 acknowledged that he was, quote, "a tax resident of the United
01:18 25 States," unquote.

1 And then a little bit further down at the beginning of
2 the second part, he also acknowledged that, quote, "I am the
3 beneficial owner of the interest paid by the bank."

4 Clearly, Dr. Ahuja knew that he was earning interest
01:18 5 on his certificates of deposits in India.

6 And, by the way, you have to look at the bottom of
7 this form to figure out when it had to be submitted by the bank,
8 and I believe it was sometime in March of 2008.

9 You also -- you've also heard the testimony about the
01:19 10 millions and the millions of dollars that Dr. Ahuja
11 wire-transferred to India. And what's on the screen right now
12 is a summary. And because this was not admitted into evidence,
13 you're not going to have this back in the deliberation room.

14 But what it shows is that the bank statements, Government
01:19 15 Exhibit 72, the HSBC-United States bank statements, reflect in
16 here that Dr. Ahuja wire-transferred over \$4 million from the
17 United States to India to be placed in either the 7002 account
18 or to be placed -- or to be invested in certificates of deposit.

19 You will have this. And you can go back and you can
01:19 20 just flip through these pages. There are very few transactions
21 in them. And, if you recall, you saw these when Special Agent
22 Cook testified. You can go through and you can see exactly
23 where the money was going and why it was going there because
24 it's all detailed in these statements. But these are the only
01:20 25 transactions in these statements.

1 But do not overlook that these statements. They were
2 mailed to Dr. Ahuja at his address in Greendale, Wisconsin.
3 They weren't mailed to anyone else. They were mailed to him.
4 He had -- all he had to do is look at his bank statements, and
01:20 5 he could tell the money was going over to India.

6 You've also seen evidence establishing that Dr. Ahuja
7 knew he was required to report his income from India. If you
8 recall Government Exhibit 42, which is the application, on
9 page 2 the boxes checked, for one of those NRO savings accounts,
01:21 10 if you look at the top of this, by the way -- if you blow up the
11 top -- there could be little question that he's opening accounts
12 in India. "Please open an account at your New Delhi branch as
13 per details below."

14 But let's look at the signature page of this document,
01:21 15 which is slide A, I believe. Above his signature under
16 "Customer Declaration," this is crystal clear: "I/we understand
17 that the accounts applied hereunder, will be opened by the Hong
18 Kong and Shanghai Banking Corporation, Limited, India."

19 And then it goes on to say in the fourth bullet point
01:22 20 that I had Ms. Katju read, quote: "Under current U.S. tax laws,
21 U.S. citizens and residents are subject to tax on their
22 worldwide income."

23 It doesn't end there. It goes on to say, "Please
24 consult with your tax preparer." And we know that Dr. Ahuja
01:22 25 never consulted with Mark Miller on this issue.

1 You've also seen the Citibank NRI application,
2 Government Exhibit 57. And at the top of that form, it's an
3 application for, quote, "Citibank rupee and FCNR deposit
4 account."

01:22 5 And you heard the testimony of Ms. Katju. She said
6 that she knew that NRI deposits that were taken out at Citibank
7 were located in India.

8 And you heard all the other evidence. I'm not going
9 to belabor this point. You've seen the applications. I think
01:23 10 it's Defense Exhibit 2060? And you've seen the other detail of
11 this. You can look at it when you deliberate. These accounts
12 are in India.

13 And if you look at this signature page, it's clear
14 that this is an offshore account. Because the word "offshore"
01:23 15 appears in this at least three times. And it's clear that this
16 is intended to put Dr. Ahuja on notice that he is the one
17 responsible for complying with any tax reporting or filing
18 requirements that may apply as a result of his country of
19 citizenship, the United States of America.

01:23 20 You also know from the returns themselves -- if you go
21 and look at the schedules -- he reports interest income from
22 banks. Not only the Citibank here, but HSBC in the United
23 States, US Bank, which is a bank here in Milwaukee.

24 Ladies and gentlemen, all this evidence that I've just
01:24 25 reviewed indicates that Dr. Ahuja knew that he had millions and

1 millions of dollars in undeclared bank accounts in India, and he
2 knew that he had hundreds of thousands of dollars of interest
3 income that he didn't report every year. And that at the time
4 he signed his returns, armed with this knowledge, he still
01:24 5 signed his returns knowing that he hadn't disclosed these to his
6 accountant; so, therefore, he acted willfully when he signed his
7 returns.

8 But there is more evidence of willfulness. And this
9 relates to the events during the summer and fall of 2009.

01:25 10 And can we all remember the e-mail that Mr. Ramit
11 Bhasin testified about?

12 This was the only exhibit that we offered through the
13 testimony of Mr. Bhasin, Government Exhibit 8. And we had
14 trouble putting this on the electronic system. If you look now,
01:25 15 you can't even read it. But guess what? You can read it, Ramit
16 Bhasin could read it, and Dr. Ahuja could read it. So when you
17 go back and read this, it's clear. We now know definitively
18 what Dr. Ahuja's state of mind was on July 4th, 2009, which was
19 about a month before he met with Mark Miller to have a
01:25 20 face-to-face meeting to talk about foreign bank accounts. This
21 talks about bank secrecy and how HSBC has got four different
22 countries that it's considering turning over information to the
23 taxing authority of other countries. One of those countries is
24 India. Please consider this because this establishes what
01:26 25 Dr. Ahuja's state of mind was when he went to meet with Mark

1 Miller in August of 2009.

2 And you heard Mark Miller testify that he prepared an
3 agenda for that meeting, as he did for many of the meetings, and
4 one of the items that he prepared -- or that he placed on the
01:26 5 agenda was to talk about the FBAR reporting requirements. And
6 he also explained to you, if you recall, that there was a lot of
7 publicity about offshore bank accounts during 2009 and that he
8 consulted with a local tax firm to get advice. And the whole
9 goal was to advise their clients at Kolb+Co that there were
01:27 10 reporting requirements. And Mark Miller, you heard his
11 testimony, that he specifically advised Dr. Ahuja of the
12 reporting requirements during that meeting.

13 But what did Dr. Ahuja say in response after
14 Mr. Miller told him about the requirement to report foreign bank
01:27 15 accounts to the United States Government? "I will check into
16 it, I will get back to you."

17 What did Dr. Ahuja do after the August meeting? Let's
18 take a look at Government Exhibit 62, which is dated
19 September 21st, 2009, the next month. Dr. Ahuja signs a letter
01:27 20 addressed to the manager, HSBC-Jersey, telling the manager
21 "Close my Jersey account and send me a check for the balance in
22 the account. Send it to my address in Greendale, Wisconsin."

23 And we have corroboration of that check because that
24 check is Government Exhibit 64.

01:28 25 Less than three weeks later -- and this is Government

1 Exhibit 82 -- Dr. Ahuja starts moving funds out of his
2 HSBC-India account and transfers them in the name of his wife.

3 Special Agent Cook testified that when he traced these
4 specific certificates of deposits into the screen shots that are
01:28 5 at Government Exhibit 71, and there are a couple at 69 for the
6 high balances, those accounts, the ones that were moved into the
7 wife's name, had over \$3 million in them.

8 Two days later -- and this is Government Exhibit 85 --
9 I stand corrected. Two days earlier. Two days earlier. This
01:29 10 is a letter Dr. Ahuja signed -- oh, addressed to the HSBC
11 manager in New Delhi, where he's authorizing the bankers over in
12 India to give Ramit Bhasin cash. Because apparently Dr. Ahuja
13 has purchased some jewelry in India and he wants Ramit Bhasin to
14 get the cash.

01:29 15 This is all part of his state of mind in the summer
16 and fall of 2009. Because after this, he then again meets with
17 Mark Miller. And Mark Miller testified that he prepared another
18 agenda. That agenda is in evidence, Government Exhibit 18. And
19 the last item on the agenda is Item K, quote: "Remember, we
01:30 20 will be" -- we will have a FBAR reporting for any foreign bank
21 accounts."

22 And how do we know that Dr. Ahuja never came clean
23 with Mr. Miller and never told him that, yeah, do you know what,
24 I do have foreign bank accounts? Well, there's no indication to
01:30 25 the right of that item. Mr. Miller said he would have made

1 notes had there been any follow-up to do. And we know from the
2 tax returns he didn't report -- the foreign bank account box was
3 checked "no" again. So we know -- and also Mr. Miller testified
4 that Dr. Ahuja never told him about his undeclared offshore bank
01:31 5 accounts during these years.

6 Ladies and gentlemen of the jury, when you conceal
7 information from your accountant, no matter how good your
8 accountant is, that information is not going to get on your tax
9 return.

01:31 10 And there is one more piece of evidence to consider is
11 that after this meeting, in a letter dated, I believe,
12 December 29th -- this is Government Exhibit 19 -- Government
13 Exhibit 19 -- Mr. Miller testified that they sent a letter to
14 Dr. Ahuja at his address in Greendale, and attached to the
01:31 15 letter was the tax organizer and then an insert that was on a
16 different colored piece of paper. And I asked him why was it
17 different, why was it on a different colored piece of paper, and
18 he said so it would stand out.

19 And if we would look at that insert, which is page 2
01:32 20 of Government Exhibit 19, and we look at the fourth item, we
21 see, again, another notification to Dr. Ahuja that, quote, "the
22 Treasury Department and IRS impose strict rules on the reporting
23 of foreign bank accounts that you own, control, or have
24 signature authority over. Please inform us if you have any such
01:32 25 accounts so that the appropriate separate filings can be made."

1 But Dr. Ahuja didn't tell Mr. Miller about the
2 accounts. And based on all the evidence that I've reviewed thus
3 far, it is clear that Dr. Ahuja acted willfully when he signed
4 his 2009 return as well as when he signed his 2006 return, 2007
01:33 5 return, and 2008 return.

6 But there's even more evidence of willfulness. You
7 should also consider the amount, the sheer size of the
8 unreported income, as well as the clear pattern of year after
9 year failing to report hundreds of thousands of dollars of
01:33 10 interest income.

11 If we look at Government Exhibit 70, over this
12 five-year period from 2005 to 2009, we are talking about
13 \$2.7 million of unreported income. And if we look at another
14 version of this chart, let's look at what percentage of
01:33 15 income -- of interest income did Dr. Ahuja actually report. And
16 what this chart reflects is that in some years Dr. Ahuja
17 reported less than 10 percent of his interest income on his
18 return. That's the year 2007 and year 2008. And over this
19 five-year period Dr. Ahuja reported only 17 percent of his
01:34 20 interest income.

21 Ladies and gentlemen, based on the evidence presented
22 during this trial, the overwhelming evidence, we ask that you
23 find Dr. Ahuja guilty of willfully filing false tax returns for
24 the years 2006 through 2009.

01:34 25 Now what I want to do is move on to the FBAR counts --

1 there are three more counts, Counts 5, 6, and 7, for the years
2 2007, 2008, and 2009 -- and review with you the elements that we
3 have to prove beyond a reasonable doubt and summarize the
4 evidence establishing and proving those elements beyond a
5 reasonable doubt.

6 First element: That Dr. Ahuja was a resident or a
7 citizen of the United States.

8 Again, this is one of those elements that is not in
9 dispute. There is a photocopy of his passport in Government
10 Exhibit 57, and that's the Citibank application, and on page 1
11 of that application Dr. Ahuja actually indicates that he is a
12 resident of the United States. It's clear that he's a resident
13 of the United States.

14 The second element is: That Dr. Ahuja had a financial
15 interest in or authority over at least one account located at
16 HSBC-India.

17 All the evidence I summarized relating to Dr. Ahuja's
18 offshore bank accounts in India on Counts 1 through 4 is
19 relevant on this point. Also the screen shots that are in
20 Government Exhibits 69 and 71, they clearly show -- they
21 identify Account 7002, and they show all the sub-accounts for
22 the various CDs. They even break down, if you recall, that in
23 the beginning in 2006 Dr. Ahuja had much of his money invested
24 in the foreign currency non-resident CDs. And later on, if you
25 want to peruse Government Exhibit 71 and 69, you'll see that

1 later on after he opens up the NRO savings account -- and that's
2 Government Exhibit 42 -- he starts moving his funds into that
3 account.

4 So there's no question that he had a financial
01:37 5 interest in foreign bank accounts in India.

6 The third element is: That the account balance had a
7 balance exceeding \$10,000.

8 Government Exhibit 69 speaks for itself. These
9 amounts range between 5.3 million in 2006 up to a high balance
01:37 10 of 8.7 million in 2009. There can be no dispute on this
11 element, ladies and gentlemen.

12 The fourth element is: That Dr. Ahuja knew that he
13 had a legal duty to file an FBAR.

14 And fifth: That Dr. Ahuja knowingly and willfully
01:37 15 failed to file an FBAR.

16 Thus we have the burden, the government, of showing
17 that Dr. Ahuja knew that there was a reporting requirement, a
18 separate requirement to file a form with the government in
19 addition to his federal income tax return. Let's look at the
01:38 20 evidence that establishes that.

21 You heard Mark Miller testify that he mailed out tax
22 organizers every year to Dr. Ahuja, and that the organizers ask
23 questions about foreign bank accounts. He didn't know whether
24 Dr. Ahuja ever looked at those organizers. He did testify that
01:38 25 Dr. Ahuja never filled them out and sent them in.

1 But the tax returns themselves put Dr. Ahuja on
2 notice. Because if you look at the Schedule B, right after the
3 foreign bank account question on 7a, line 7a, it says "see page
4 B2 for exceptions and filing requirements to Form -- for Form
5 TDF 90-22.1."

6 Now, who in the world knows what that form is? Mark
7 Miller knew what the form was. He said -- he told you that it
8 was the FBAR form. The point is, though, is that it doesn't
9 matter what the form is. The tax return says check out the
10 filing requirements for the form. That put Dr. Ahuja on notice.
11 Because when he signed the return under penalties of perjury, he
12 declared that he had reviewed the contents of his return
13 including all accompanying schedules. So we have that evidence.

14 We also have the evidence that Mr. Miller stated when
15 he testified that had Dr. Ahuja been truthful and told him about
16 his foreign bank accounts he would have inquired and determined
17 whether they exceeded \$10,000, and then he would have asked
18 Dr. Ahuja, "Do you want me to file the return?"

19 In addition to that, we have all the evidence
20 indicating that Dr. Ahuja intentionally concealed the existence
21 of his foreign bank accounts, as well as the income earned from
22 those foreign bank accounts, from Mr. Miller.

23 All of this evidence applies to Counts 5, 6, and 7,
24 which are the 2007, 2008, and 2009 calendar years.

25 But there's one more piece of evidence that we submit

1 to you is both compelling evidence and it's also evidence that
2 is uncontroverted, and that is: In August of 2009, Mr. Miller
3 specifically informed Dr. Ahuja of the FBAR reporting
4 requirements. And that, ladies and gentlemen, definitely put
01:41 5 Dr. Ahuja on notice.

6 Therefore, we submit to you that the evidence relating
7 to Count 7, which relates to the 2009 FBAR which would have been
8 filed as of June 30th, 2010, is overwhelming. And based on the
9 other evidence I reviewed with you, the FBAR counts for two
01:42 10 thousand -- 2007 and 2008, which are Counts 5 and 6, we submit
11 to you that there is ample evidence for you to find that
12 Dr. Ahuja acted willfully when he failed to file those FBARs.

13 Therefore, we are asking that you return guilty
14 verdicts on Counts 5, 6, and 7.

01:42 15 Ladies and gentlemen, when you go back and start your
16 deliberations, you're going to have all the evidence. A lot of
17 the evidence speaks for itself, especially the letters that
18 Dr. Ahuja signed. That evidence shows beyond a reasonable doubt
19 that Dr. Ahuja maintained undeclared foreign bank accounts in
01:42 20 Jersey and in India that had millions and millions of dollars in
21 them that generated millions and millions of dollars of
22 unreported interest income, and he concealed those facts from
23 both his accountant and the IRS.

24 In the final analysis, ladies and gentlemen, this case
01:43 25 is not complicated, and therefore we ask that you return the

1 only verdicts that are just in this case and those are verdicts
2 of guilty. Thank you.

3 DEFENSE CLOSING ARGUMENT

4 MR. WEBB: Good afternoon, ladies and gentlemen of the
01:43 5 jury. I just heard the government's closing argument. And when
6 I first spoke to you, the first time I spoke to you, I
7 respectfully said to you that there are two sides to every
8 story.

9 Well, I am stunned that the government counsel has
01:44 10 left out so much evidence that you heard during the course of
11 this trial that relates to the critical issues in this case, and
12 I am going to take some time to carefully talk about it.

13 This is my opportunity to give a closing argument on
14 behalf of Dr. Ahuja. This will be my last chance to talk with
01:44 15 you about the evidence. The way the procedures work is the
16 government got to give his closing argument, I'm given a chance
17 now to speak, but then the government gets a second chance.
18 They speak again. So this is my only chance to talk to you.

19 And there's a lot at stake in this case and so I'm
01:45 20 going to take some time. I'm going to try to go slow, but my
21 goal is, I'm going to talk about what I believe to be the actual
22 evidence that you heard, and I'm going to try to put it into a
23 framework of the legal instructions that you're going to get
24 from the Court so that I can try to organize my evidence based
01:45 25 on issues that I believe you have to address back in the jury

1 room.

2 You will be instructed on legal principles that you
3 are to accept as the law and apply to the facts as you find them
4 to be. Those legal principles will be given to you by the Court
01:45 5 after these closing arguments are completed. But we as lawyers
6 know what those instructions are. They've been -- we know what
7 they are. And so as I go through my presentation to you this
8 afternoon -- and it's going to take awhile -- I'm going to try
9 to walk through all the critical evidence that I believe was
01:46 10 actually presented during the course of the trial and try to put
11 it into a framework that I believe are the legal requirements in
12 this case.

13 And the government might think -- are in agreement.
14 The government just told you that they believe they can prove
01:46 15 that Dr. Ahuja willfully and knowingly filed false income tax
16 returns from 2006 through 2009. That's their position.

17 During counsel's closing argument, they totally
18 ignored what we have been presenting during the course of the
19 trial from witness after witness, which is the reason -- there
01:46 20 is certain HSBC interest income that is not on Dr. Ahuja's tax
21 returns. I told you that in the first five minutes of my
22 opening statement when I first met you in this case. That's not
23 an issue in the case. There is interest income that is not on
24 his tax return from HSBC CDs. I told you in my opening
01:47 25 statement that I thought what the evidence would establish is

1 that he never received any 1099 forms ever from HSBC, and I was
2 curious as to why that happened.

3 You now know from Agent Cook that I was right. There
4 never were any HSBC 1099 forms ever sent to Dr. Ahuja in
01:47 5 connection with these CDs. And the government has acknowledged
6 that they've done their entire investigation and they've now, as
7 Agent Cook said, confirmed that Dr. Ahuja did not receive any
8 HSBC 1099 forms.

9 The government just ignored that for 45 minutes in
01:47 10 talking with you. That has been the whole case, is that we've
11 been explaining to you that Dr. Ahuja did not willingly and
12 knowingly file false tax returns. There was a mistake made
13 because he didn't get 1099 forms. It actually wasn't even his
14 mistake.

01:48 15 We proved to you during the trial, and I'm going to
16 summarize it for you, HSBC-USA here in the United States was
17 responsible for sending Dr. Ahuja 1099 forms just like Citibank
18 did, just exactly like Citibank did on similar accounts, and
19 HSBC did not do it. And because they did not do it, this money
01:48 20 did not get on his tax return. And that was not because he
21 willingly and knowingly did it. It was because of a mistake,
22 but the mistake was HSBC's.

23 Now, I want to return -- the government not only has
24 to prove willfulness, they have to prove it beyond a reasonable
01:48 25 doubt. And I just want to stop. We talked about this in my

1 opening statement, but I just would like to respectfully ask you
2 to focus on those words.

3 This is a criminal case. The stakes are extremely
4 high as a result of that. Our system of justice for over 200
01:49 5 years has said that in criminal cases you need to be sure, so
6 that's why we put this burden called beyond a reasonable doubt.

7 This is not a civil case dealing with money or
8 property, real estate, or something like that. This is a
9 criminal case, and that's why the words I put on the screen.

01:49 10 "Proof beyond a reasonable doubt" is the standard that you all
11 agreed to apply when you took your oath to serve as jurors in
12 this case. And all I respectfully ask you, when you go back to
13 the jury room to begin your deliberations and talk about the
14 issues in this case, I respectfully hope and ask that you
01:49 15 remember that the government has the burden of proof.

16 In our system of justice, the defendant does not have
17 to prove anything, zero. Zero. The burden of proof always sits
18 at this table. It never leaves this table ever once during this
19 case unless and until you all decide -- after you've talked
01:50 20 about the evidence and deliberated you decide that they've
21 sustained and met that burden of proof beyond a reasonable
22 doubt. Only then does that burden disappear.

23 And so as I speak to you now, the burden of proof
24 rests here at this table. So I'm going to be talking about it
01:50 25 because the defendant is presumed at all times to be innocent.

1 And if you find things in the case that nags at you, that you
2 ask yourself, hm, maybe that's true but maybe it's not, that's
3 not proof beyond a reasonable doubt. And that is the standard
4 that is to be applied based on the law that you'll be given by
01:50 5 the Court, and it's a standard that is a very high standard and
6 it's one that I just respectfully ask that you think and talk
7 about when you go back to the jury room and ask yourself about
8 this issue of willfulness.

9 Because I put on the screen -- there are six facts I
01:51 10 just put on the screen that I believe are undisputed in this
11 case. I believe these six facts are undisputed. And if even
12 one or two of these facts were true, they would create
13 reasonable doubt. But there are six facts on here that I'm
14 going to spend some time talking about, and let me just review
01:51 15 them with you because I don't think they're in dispute in the
16 case and they go directly to the issue of whether Dr. Ahuja
17 acted knowingly and willingly when he did not put the HSBC
18 interest income on his tax returns.

19 First point: HSBC did not provide Dr. Ahuja with 1099
01:51 20 forms.

21 Agent Cook has admitted that. It has been absolutely
22 established that the government did not call anyone from HSBC to
23 show the contrary. HSBC did not provide 1099 forms to
24 Dr. Ahuja.

01:52 25 Number two: There is no evidence -- I'm talking about

1 zero evidence -- that Dr. Ahuja ever knew that he was not
2 getting 1099 forms. Never -- and I'm going to walk through that
3 evidence. But I thought they might call someone from HSBC. I
4 didn't know. They had the burden of proof. I thought they were
01:52 5 going to call someone from HSBC who would say, you know, when he
6 opened up this account we told him, "Doc, you know, you don't
7 have to worry about taxes; we're not going to send you a 1099
8 form."

9 That did not happen in this case. There is not a
01:52 10 single piece of testimony that that happened. So we know that
11 Dr. Ahuja did not know. You can't guess about this. You need
12 either documents or evidence. You just can't guess and say,
13 well, I bet he knew. We need evidence in a courtroom. They
14 didn't bring anybody in from HSBC to say that he was ever told
01:53 15 or would have known that he did not get the 1099 form.

16 We also know from Mr. Miller's testimony that he
17 had -- he got 18 to 32 separate 1099 and similar forms during
18 these relevant years and that he had tax people that we're going
19 to talk about, Mr. Branch and Mr. Miller, who went through his
01:53 20 1099 forms.

21 And we know now from the evidence, Mr. Miller told you
22 that every time, every time a 1099 form was sent to Dr. Ahuja,
23 it ended up with Mr. Miller and it ends up on his tax return.

24 This is not a case where you've got evidence that
01:53 25 somehow Dr. Ahuja -- Citibank. Citibank sends him a 1099 form

1 for \$122,000 in 2009; it's on his tax return. When the 1099s
2 came in, Dr. Ahuja had a system that Mr. Branch got it to
3 Mr. Miller. And Mr. Miller told you, he said, "We didn't miss
4 one, not one in all these years. Not one ever fell through the
01:54 5 cracks because the IRS gets a copy of the 1099 forms and they
6 would contact me if we missed one."

7 So we know that Dr. Ahuja, every 1099 form gets
8 reported on his tax return. But we know he didn't get the HSBC
9 1099 but we don't know why. Because the government never
01:54 10 explained to you once during this trial why that happened. Not
11 once. And they said they can prove their case beyond a
12 reasonable doubt.

13 We know that during the relevant years Dr. Ahuja paid
14 \$44.4 million in federal income taxes. We know that the amount
01:54 15 of unpaid taxes here is 1.8 percent. And we know on
16 willfulness, on this issue of willfulness, if a taxpayer wants
17 to cheat, he's going to find a way to cheat more than
18 1.8 percent. So that number is very important as evidence that
19 Dr. Ahuja was not acting willfully.

01:55 20 And the last point I put on my chart -- think about
21 this -- when people set up foreign accounts, they want to hide
22 income. They use shell corporations, phony names, because they
23 want to hide their identity. Dr. Ahuja had no way to know he
24 wasn't going to get a 1099 form. He had no way to know that,
01:55 25 and he didn't try to hide these accounts. He opened this

1 account at HSBC in his own name in New York, in his own address.

2 There's not a single speck of evidence that there were
3 any shell corporations or phony names ever used in connection
4 with him and his banking relationship with HSBC.

01:55 5 Those six points I've put on the chart I'm going to
6 talk about in a little more detail, but I started by -- I just
7 want to remind you, the government chose not to talk about any
8 one of those six points during their closing argument. Any one
9 of those points, two of them, three of them, would establish a
01:56 10 reasonable doubt, and the government has chosen not to address
11 those in their closing argument.

12 There are two charges for filing false returns: One
13 is not reporting that HSBC interest income.

14 Two is a little more technical. It's not checking off
01:56 15 the right boxes or filing the right forms regarding disclosing
16 foreign accounts.

17 I'm going to talk about both of these. I'm going to
18 talk about what the evidence is and what the government has to
19 prove to establish willfulness on both. I'm going to take some
01:56 20 time to do it. I want you to understand exactly what the
21 evidence is.

22 So -- but I put down at the bottom of this chart a
23 fundamental fact that has been testified to in this trial: "If
24 HSBC had actually sent 1099 forms, if they had, both of these
01:57 25 problems would have been resolved."

1 We know from Mark Miller that, absolutely, the money
2 would have gotten on his tax return, and we also know that if
3 the 1099 disclosed foreign accounts that it would have been --
4 the boxes would have been checked off. Both of these so-called
01:57 5 crimes which occurred because HSBC, for reasons that you don't
6 know and I don't know, chose not to send a 1099 out is why this
7 happened in this courtroom. And yet Dr. Ahuja is being faced
8 with multiple felony counts because of that.

9 The government in their opening statement -- the
01:57 10 government's theory -- and you heard it again. They have a
11 theory that Dr. Ahuja knew he wasn't getting 1099 forms. They
12 had a theory, but they didn't give you any evidence of that.
13 This is the opening statement from the government.

14 Prosecutor said: "Dr. Ahuja, a Greendale
01:58 15 neurosurgeon, was provided with the seemingly perfect
16 opportunity to get away with filing false tax returns and never
17 be discovered by the United States Government. He utilized
18 foreign accounts to conceal part of his income."

19 That perfect opportunity -- they're trying to suggest
01:58 20 to you the perfect opportunity would be if somebody knows -- if
21 HSBC had told Dr. Ahuja, "You will not get a 1099 form. Don't
22 worry about it." And Dr. Ahuja says, "Wow. I'm not gonna get a
23 1099 form? I don't have to put this money on my tax return.
24 I'll get away with it."

01:58 25 That's what they told you. But they have to prove

1 that. And I put right here on the screen, I've waited and I'm
2 waited during this trial -- we can't guess, did any witness, did
3 any witness at all testify in any way that said that Dr. Ahuja
4 was told or knew he wasn't getting a 1099 form. Did anybody?

01:59 5 No. Not a single witness. They called one HSBC
6 witness, Ms. Katju, and she said she didn't know Arvind Ahuja,
7 had never met him, didn't know anything about him. That's what
8 she said.

9 And they called Ramit Bhasin, and he told you, "I
01:59 10 never discussed 1099 forms with Dr. Ahuja."

11 Those are the two witnesses. The only two witnesses
12 they called in the case that know my client. Neither one of
13 them had given you any evidence, zero testimony, that he knew he
14 wasn't getting 1099 forms.

01:59 15 Now, you can go back there in the jury room and say,
16 "Oh, I bet he did, or the government says he's a sophisticated
17 smart investor, he takes responsibility for" -- that's not
18 evidence. That's -- all they're doing is guessing. They've got
19 to prove that beyond -- beyond a reasonable doubt.

02:00 20 And there's not -- I thought they -- they didn't call
21 a single witness that testified that Dr. Ahuja had any knowledge
22 that he wasn't getting 1099 forms, not a single witness.

23 And documents. The other form of evidence is
24 documents. If they had documents from HSBC where they made some
02:00 25 kind of record that Dr. Ahuja was told he's not getting 1099

1 forms, they would have offered that into evidence. They did
2 not. So there's no testimony, there's no document. So there's
3 no evidence at all on this critical issue, none, zero.

4 This is her testimony, Ms. Katju.

02:00 5 "You never met Arvind Ahuja, have you?

6 "Not to the best of my knowledge.

7 "And you never recall meeting him, right?

8 "No, I don't recall meeting him."

9 That's hardly somebody from HSBC that's going to be
02:00 10 able to provide you with testimony that Dr. Ahuja was told he's
11 not going to get 1099 forms. This is Ramit Bhasin's testimony.
12 I asked him -- I grilled him on this.

13 "Did you ever tell Dr. Ahuja that HSBC would not be
14 providing him 1099 forms?

02:01 15 "No, I did not.

16 "As far as 1099 forms are concerned, at any time did
17 Dr. Ahuja ever tell you he was aware he was not receiving 1099
18 forms?

19 "No, he did not."

02:01 20 Next question: "And sir, at any time, did you ever
21 tell Dr. Ahuja that HSBC was not providing you with 1099 forms?

22 "ANSWER: No, I did not."

23 "So you didn't have any discussions with him about
24 1099 forms?"

02:01 25 I faced this issue head-on with someone who walked

1 into the courtroom who was coming on with a deal with the
2 government, and I put him right on the line because you had to
3 know one way or the other, I want to find out, and he didn't.
4 Zero.

02:01 5 All of these witnesses -- did you see all these people
6 on the screen here? These are bankers that -- these are people
7 that maintained and worked on Dr. Ahuja's tax returns -- I mean
8 on his bank account. These are the people that worked for
9 HSBC-USA. They work right here in New York. And they at
02:02 10 various times were involved in managing his account.

11 And the most -- the two most frequent are Mr. Tandon
12 and Ms. Dhanani, but the other names that you see there are on
13 these exhibits. I thought they might call one of them. They
14 didn't.

02:02 15 Not a single witness came in on behalf of HSBC by the
16 government to try to prove that Dr. Ahuja knew that he wasn't
17 getting 1099 forms. Not a single witness. That's not proof
18 beyond a reasonable doubt.

19 1099 forms, what are they? I think you know. I won't
02:02 20 spend a lot of time, but they are important in this case. And
21 probably a lot of you know just because you file tax returns,
22 and you probably get some of them. They are the government form
23 that's required -- the payors, banks, insurance companies have
24 to send you. And they have to tell you how much interest you
02:02 25 earned because, otherwise, you don't know what to put down on

1 your tax return because they have to calculate that. The law
2 requires that, and they do.

3 It tells you the exact amount of interest, and then
4 you take it and you record that amount of interest on what's
02:03 5 called Schedule B. That's what they didn't send to Dr. Ahuja.

6 The customer, by the way, then it's his
7 responsibility -- once he gets a 1099, it's that taxpayer then
8 does have the responsibility to make sure that it gets on his
9 return.

02:03 10 Dr. Ahuja did that every single time, sometimes 30,
11 35 times a year he would get forms, and every one of them was
12 recorded on his tax returns.

13 And a copy of it goes to the IRS so that the IRS can
14 keep track and make sure that you haven't missed one and make
02:03 15 sure they're recorded.

16 So we know that Dr. Ahuja reported every single 1099
17 form that he received, and he didn't get one from HSBC.

18 I want to talk a little bit -- you've heard the
19 evidence now. And so I told you when I started my
02:03 20 presentation -- first time I talked with you in the opening
21 statement, there's kind of four major players or people tied to
22 these events. I want to talk to you about what do you now know
23 about these four people based on the evidence you've heard.

24 You know my client is 50 years old, married, two
02:04 25 children, came in from India, young age, went on to become a

1 prominent brain surgeon, performs cutting-edge-type of brain
2 surgery here in the United States. He's one of the few that can
3 do these procedures.

02:04 4 Mark Miller talked to you in some detail about who he
5 was and how he's a world renowned neurosurgeon. I don't have to
6 go on and on about it, but he set up a neurosurgery center at
7 St. Luke's Hospital, and he's someone who works frequently 12,
8 14, 16 hours a day six or seven days a week.

02:04 9 He basically created a neurological center at
10 St. Luke's Hospital and recruited younger doctors, and they
11 built it up to -- they employ 40 to 50 people now in this
12 neurosurgery practice.

02:05 13 And he's also part of the community and very
14 philanthropic. And Mr. Miller explained his charitable
15 activities. And they're community minded as a family. And
16 that's my client, Dr. Ahuja.

17 They called two witnesses that had contact with
18 Dr. Ahuja to prove their case beyond a reasonable doubt. Some
19 cases it might be 10 or 20, but there's two.

02:05 20 What's interesting is that one of them, Ramit Bhasin,
21 got caught on the witness stand lying about material issues in
22 this case. There's virtually nothing he said that you could use
23 to convict somebody on. I'm going to walk through that.

02:05 24 The other person, Mark Miller, was a very credible
25 witness, very professional, very --

1 MR. SULLIVAN: Objection, Your Honor. The reference
2 to "he was a very credible witness."

3 THE COURT: Overruled.

4 MR. WEBB: You judge -- you make that credibility
02:06 5 judgment. Remember him and you know what he talked about and
6 how professional he was.

7 He talked -- he provided an enormous amount of
8 evidence that supports Dr. Ahuja, didn't help the government at
9 all. I still don't know why they called him.

02:06 10 Those are the only two witnesses. One was a liar, and
11 the other helped Dr. Ahuja. That's their case beyond a
12 reasonable doubt.

13 Ramit Bhasin. I'm not going to belabor this, but you
14 saw him testify. They were very close family friends. He
02:06 15 described Dr. Ahuja as being like his brother and a father to
16 his children.

17 He had a long career in banking. He told you about
18 that. He told you about this non-prosecution agreement that he
19 entered into so he could avoid having any charges filed against
02:06 20 him, and he agreed to testify against Dr. Ahuja.

21 Let's talk about his credibility just for a moment.
22 He told you -- first of all, did he have any motive? Did he
23 have a motive or bias to fabricate to help the government?

24 He told you that he did. He told you that he wanted
02:07 25 the government to agree not to prosecute him because he was

1 facing a long time in jail for tax fraud and he wanted a deal
2 from the government. He told you that. And he said that was a
3 huge benefit to him because the government gave him a
4 non-prosecution agreement. And he said that was a huge benefit
02:07 5 to him, to help him testify in this case.

6 He then said, "Not only that, but by giving me a
7 non-prosecution agreement, they saved my career, my ability to
8 work in the banking industry at World Bank of Scotland, because
9 if I got indicted or charged, I would be out of the banking
02:07 10 industry." He said that was a huge benefit to him. He
11 basically said, in order for me to get my deal with the
12 government -- and I think most of you followed this -- he had to
13 kind of give what he called a prof. He had to tell the
14 government in advance what could he say about Dr. Ahuja.

02:08 15 And then if the government thought it was valuable
16 enough, they'd give him the deal. And he did that. And he
17 testified. He gave them a proffer of evidence and told them
18 things that he told you here in this courtroom, which we're
19 going to talk about, and then they gave him the deal that he
02:08 20 wanted.

21 But when they -- and when they interviewed him,
22 they're only focused on Dr. Ahuja. He had referred five to ten
23 other people to HSBC, and he said they only were interested in
24 Dr. Ahuja.

02:08 25 And it was interesting. I asked him, by the way, did

1 you ever tell -- does your bank now know that you've been
2 prosecuted? He said, "No."

3 I said, "Don't you think that's a little bit
4 dishonest?" And there was this hesitation like he never thought
02:08 5 about it. He never thought about should he be telling his
6 employer that he's committed bank fraud and is a witness in a
7 case, but he said, "I didn't think about it."

8 He also told you that -- I asked him -- I said, "Do
9 you know, you said that that man was your brother, like a father
02:09 10 to your kids. After you did this, did you at least tell him?
11 Look, I've had to testify against you in the grand jury." He
12 said, "No."

13 I said, "Did you -- three or four weeks after you
14 testified in the grand jury, did you pack up your wife and kids
02:09 15 in India and fly them to Milwaukee and stay at Dr. Ahuja's house
16 and enjoy his hospitality and his graciousness for two weeks?
17 And did you actually -- were you with him the day the grand jury
18 indicted him?" I saw the agony on his face. And I said, "Did
19 you tell him then that you're the one that went to the grand
02:09 20 jury? He said, "No." He said, "I didn't tell Dr. Ahuja about
21 that."

22 I then asked him about the following, as far as his
23 credibility as a witness. When he entered into this deal with
24 the government, he promised the government that he would file
02:10 25 true and accurate amended tax returns. That's what he promises.

1 And for him to get his deal, he had to do that. And his deal
2 said that if you don't live up to your conditions we will revoke
3 your deal and prosecute you.

4 He then admitted on the witness stand, while I was
02:10 5 asking him questions, that after he flew over here last week --
6 he got over here last week before he testified, he was here in
7 Milwaukee, and he met with the prosecutors. And they started
8 asking him about his amended tax returns because he had filed
9 amended tax returns, which he promised would be accurate and
02:10 10 correct tax returns. He said he filed them.

11 And then he was meeting with the government last week,
12 and they were asking him about his wages from HSBC in 2006 and
13 2007. And then he went back, apparently, to another --
14 somewhere else and then said, "It just dawned on me. I forgot
02:11 15 to put \$450,000 of wage income on my amended returns." Forgot.

16 He thought the government, these prosecutors, had
17 caught him, caught him in violating his agreement because he had
18 promised he would file amended tax returns and make them
19 accurate. He got caught. So then he calls them up and says,
02:11 20 "Oh, do you know what, I think I just remembered. I forgot
21 \$450,000."

22 These amended tax returns he's reporting 16, \$18,000
23 in amended income? He forgot 450,000 that he had to put on his
24 original return, and that he didn't put on his amended return.
02:11 25 He was in breach of his agreement.

1 And I asked him: "You just breached your agreement
2 with the government. The agreement says they shall prosecute
3 you. Are you being prosecuted?" And he said, "No, they didn't
4 prosecute."

02:12 5 They put him on the witness stand, didn't prosecute
6 him for breaching his agreement, did not prosecute him at all,
7 and then he's gone back to India, presumably. That's the deal
8 he had with the government. So he clearly breached his
9 non-prosecution agreement.

02:12 10 He also breached it in connection with another
11 paragraph where he had promised he would pay \$1 million in FBAR
12 penalties, basically, saying, if you give me my non-prosecution
13 agreement so I don't have to go to jail, I will give you --
14 among other things, I'll pay these penalties.

02:12 15 I asked him, I said, "16 months later have you done
16 so?" He said, "No."

17 He provided false testimony. He tried to reach out
18 and help the government against Arvind Ahuja. And I caught him
19 in two different lies right here in front of you.

02:12 20 Lie one is that he tried to say he's the one that
21 referred Arvind Ahuja to HSBC to set up bank accounts. And I
22 pointed out to him that couldn't possibly be true because
23 Dr. Ahuja set up his HSBC account on August 17, '01. August 17,
24 '01 is when Dr. Ahuja set up his HSBC account. Ramit Bhasin
02:13 25 wasn't even working. He didn't even work at HSBC until 2002.

1 So it would have been impossible for Bhasin to have referred
2 Arvind Ahuja to HSBC. And nobody came in here from HSBC to say
3 that that did happen.

4 So I guess he wanted to somehow, like, to get a
02:13 5 non-prosecution agreement, be a big man with the government and
6 say, "Hey, I'm the one that brought Arvind Ahuja in, sent him
7 over to people, and they set up these nefarious accounts."

8 That's just not true. It did not happen that way. It
9 was two years earlier that Dr. Ahuja set up his account at HSBC,
02:14 10 having nothing to do with Ramit Bhasin.

11 And then we have the golf course testimony. In order
12 to get his non-prosecution agreement, he had told a story to the
13 government about how he was playing golf with Dr. Ahuja in
14 California, and he remembered so clearly having a conversation
02:14 15 about Dr. Ahuja being concerned about a Citibank 1099 form. And
16 he told you that on direct examination. That was his big
17 testimony to incriminate Dr. Ahuja.

18 And I asked him on cross, I said, "Are you sure?
19 You're telling me -- where were you?" He said, "I was in Pebble
02:14 20 Beach, California, on the Pebble Beach Golf Course in June of
21 2009. I know I was there. I flew in through San Francisco from
22 India. And I went to Pebble Beach, and I golfed with Dr. Ahuja.
23 And I remember having this conversation with him on the golf
24 course."

02:15 25 I made him pull out his passport, pull it out right

1 here in front of the jury, right. And he said, "Well, you can't
2 see it because it's covered up." But it doesn't show landing in
3 San Francisco. It shows CHI, which, by the way, would be
4 Chicago because he was probably going to Milwaukee. He didn't
02:15 5 go in through San Francisco.

6 But then over the weekend, after he gave that
7 testimony, I subpoenaed the bank records from Pebble Beach
8 because I wanted to find out. And I presented it to you in the
9 courtroom and showed you. He lied. He did not golf at all with
02:15 10 Dr. Ahuja in June of 2009.

11 Now, I then showed, through Pebble Beach, that he was
12 at Pebble Beach with Dr. Ahuja in July of 2008. But that was
13 before Dr. Ahuja even had an account at Citibank, didn't even
14 have an account with Citibank. So he couldn't possibly have had
02:16 15 the conversation in July --

16 And then yesterday the prosecutor jumps up and said,
17 "Oh, maybe he went to Milwaukee and played golf in Milwaukee."
18 So I brought in the lady from the golf course in Milwaukee near
19 Dr. Ahuja's house. No, he didn't golf there either. He lied to
02:16 20 you.

21 This is when the Citibank account gets opened up.
22 It's on August -- October 16th, '08, for \$1 million. The first
23 Citibank 1099 form that could have ever been issued would be in
24 January and February of '09.

02:16 25 So, just remember, I kept -- Bhasin kept telling me:

1 "No," that "I came to California. I was golfing with
2 Dr. Ahuja." He went on and on and on.

3 In fact, I'm going to find --

4 "Is there any doubt in your mind about that?"

02:16 5 "I was at the golf course. I was actually on the tee
6 box when I started to swing."

7 He was telling you, "I remember the conversation so
8 well that I was swinging when he told me about the 1099 form."

9 And now we have the records from Pebble Beach, which
02:17 10 the government, by the way, even hadn't contested. The records
11 make it -- it's impossible. We know exactly.

12 I offered into evidence the actual records from Pebble
13 Beach -- and they're right here in this exhibit, Exhibit 2228 --
14 every tee time, everyone who golfed in Pebble Beach in June of
02:17 15 '09, and they aren't there. They are not there.

16 I then asked Pebble Beach if you would go back and
17 find out, do a search from somewhere earlier in '08 all the way
18 up until today. Let's find out were they ever there together.
19 And they were there on one occasion. When they did the search,
02:17 20 they did one search, and they found both of them there on July
21 2nd to July 5th of '08. So they were there in July of '08.

22 And it would have been impossible for Dr. Ahuja to
23 have mentioned a Citibank 1099 form as having received it when
24 it didn't -- it wouldn't have even been issued until eight or
02:18 25 nine months later. He lied about this critical conversation

1 because he thought he was going to help the government. That's
2 the kind of testimony you're supposed to use to convict
3 Dr. Ahuja. I respectfully suggest that's not proof beyond a
4 reasonable doubt.

02:18 5 Interesting. One other thing I just want to point out
6 to you about Ramit Bhasin. He actually retained a prominent tax
7 preparation firm called McGladrey to prepare his amended
8 returns. And he testified, "I told them all the facts about why
9 I didn't report HSBC income on my return."

02:19 10 The McGladrey firm, a very reputable firm, after
11 hearing all those facts, they put on the amended returns, they
12 concluded that what Bhasin had done was inadvertent. That's
13 what they wrote down on his amended returns. And I don't think
14 the government has challenged that. Inadvertent.

02:19 15 And yet in this case when Dr. Ahuja, who doesn't even
16 get a 1099 form says he made a mistake, he's now under
17 indictment with multiple felonies.

18 Mark Miller, you know who he is. He's the tax
19 preparer that testified in some detail during the course of our
02:19 20 trial. You judge his demeanor. He told you that his firm would
21 not represent someone who concealed information from them. And
22 he told you -- actually told you six things that I'm going to
23 walk through quickly with you that are important to this case.

24 First of all, he told you he had no trouble getting
02:20 25 tax information from Dr. Ahuja and his people. This is his

1 testimony. He explained in detail he doesn't remember any
2 occasion he had any problem getting tax information from
3 Dr. Ahuja.

02:20 4 As far as tax compliance, he told you that he
5 considered Dr. Ahuja to be above normal as far as complying with
6 tax laws.

7 As far as 1099 forms, he told you they got all
8 reported every time. Explained to you in some detail how he
9 knows, he's never heard from the IRS that every year they report
02:20 10 18 to 32 interest 1099s or similar forms, and every one of them
11 gets reported on Dr. Ahuja's tax return. He's not a tax cheat.

12 He said that he would terminate a client if they
13 concealed information, and he's still representing Dr. Ahuja to
14 this day.

02:20 15 And, lastly, he told you this right here:

16 "QUESTION: Please listen carefully to the question.
17 Do you know the reason for underpaid taxes in the years 2004 to
18 2005 as shown on Exhibit 2092? Answer yes or no.

19 "ANSWER: Yes.

02:21 20 "QUESTION: And what was the reason for that?
21 "Because there was no 1099 that was received by our firm knowing
22 that the income existed."

23 That's what he told you. He's the government's own
24 witness, and that's what he told you happened in this case.

02:21 25 Tom Branch. They didn't call Tom Branch to the

1 witness stand. They could have; they didn't. Now, Tom Branch,
2 you know, was the person who gathered the 1099 forms and other
3 tax information and delivered it to Mark Miller. And Mark
4 Miller testified that Tom Branch was a very professional person,
5 and that he thought that he did a good job. But we didn't hear
6 from Tom Branch because the government chose not to call him as
7 a witness.

8 Let me walk through quickly the two different crimes
9 that they allege are false statements. The first one is not
10 reporting HSBC CD interest income. And here's what we know
11 about that. We know that Dr. Ahuja did not get 1099 forms, and
12 he didn't know it.

13 The relationship starts in August of 2001. That's
14 what we know. There was a deposit of \$1,075,000. We know that
15 Dr. Ahuja used his own name, his own home address when he set
16 that account up.

17 There's the deposit right there on the screen.

18 We know what HSBC is. It's a large international
19 bank, headquartered in London, and that they have affiliates in
20 the U.S. and in 80 other countries.

21 We know from the records in this case that Dr. Ahuja
22 deposited all of his deposits into HSBC-USA. The prosecutor
23 said that he wire-transferred money to India and Jersey.

24 You look at the documents. That did not happen.

25 Every single wire transfer in this case goes to Dr. Ahuja's bank

1 in Milwaukee to HSBC-USA in New York. Every single one of his
2 wire transfers goes exactly that way.

3 I put kind of a diagram here up on the screen so you
4 can see it, that every single one, he deposits money into the
02:23 5 domestic account here in the United States. Then HSBC takes
6 money and buys CDs. They bought CDs in Jersey and India.

7 That's no secret. I told you that in my opening
8 statement that that was no secret. And Dr. Ahuja was very much
9 aware of that. But Dr. Ahuja had a domestic account at HSBC in
02:23 10 the United States.

11 Now, we know that HSBC did not send 1099 forms to
12 Dr. Ahuja. That's not in dispute. They did send 1099 forms to
13 him, but didn't include the CD.

14 So here's what we don't know. For eight years in a
02:24 15 row Dr. Ahuja's tax preparer got 1099 forms from HSBC. They
16 didn't include the CDs in Jersey and India. They included
17 interest on a Premier account, but not CDs. And I thought they
18 were going to call someone to explain this, and they didn't. We
19 don't know -- why this 1099 form is wrong, we don't know because
02:24 20 no one came to explain it.

21 Here's what we know from the documents that came into
22 evidence. Just so you know, you -- just to be -- we don't know
23 when HSBC in New York started taking Dr. Ahuja's money and
24 investing it in CDs in India and Jersey. We don't know. I
02:25 25 don't know. You don't know. There's no documents to show it.

1 We know that he opened the account in 2001, and the
2 first time that I can see from the records is the summer of '05.
3 By the time you get to the summer of '05, HSBC in the U.S., in
4 New York, is taking some of its CD money and they're investing
02:25 5 it in India at HSBC, their sister bank, and they're investing it
6 in Jersey.

7 And we don't have the records from India. I don't
8 know why they did that. Maybe because they wanted to get more
9 interest -- maybe they could invest their money better in India.
02:25 10 We don't have their records. We don't know. But HSBC in USA --
11 and we don't know when and we don't know why. There's no one
12 who has come into the courtroom to explain when and why did HSBC
13 in New York decide to put Dr. Ahuja's money into CDs in two of
14 their sister banks in different countries, in India and Jersey.

02:26 15 We can guess, but you can't guess in a criminal case.
16 It's got to be proven beyond a reasonable doubt. And we don't
17 know when and why and how that happened. We don't know. And
18 the government has not explained it to you because they didn't
19 call any witnesses.

02:26 20 But just so -- it may have been confusing by the
21 government's explanation, but all of these deposits -- every
22 one; they're in evidence -- every one of them is a wire transfer
23 from his bank in Milwaukee to HSBC-USA in New York.

24 None of those -- he's not sending money. HSBC then
02:26 25 sends money to foreign countries, but he doesn't. Over the

1 years, we know he communicated only with HSBC-USA bankers. He's
2 not communicating with people in India and Jersey. Every
3 communication is him sending e-mails back and forth to these
4 people in New York. There's no evidence that I'm aware of that
02:27 5 he's talking to anybody at HSBC-India or Jersey.

6 And by the way, all of his bank statements, every one
7 of these bank statements is from HSBC-USA. That's -- these are
8 not bank statements from HSBC-Jersey or bank statements from
9 India. These are bank statements from HSBC-New York.

02:27 10 Now, they put these letters up on the screen as if
11 somehow these are incriminating evidence of something. We don't
12 deny Dr. Ahuja was aware that they had put CD money -- he knew
13 he had CDs in India and Jersey. He knew that. I told you that
14 in the opening statement. He absolutely knew that he had money
02:27 15 in India and he had money in Jersey. And that he knows that
16 because he's got records but the records are coming from
17 HSBC-USA.

18 These kind of letters that we have on the screen here,
19 those letters, according to the testimony, were drafted by
02:27 20 bankers in New York at HSBC-USA would draft this kind of letter,
21 send it to Dr. Ahuja, and then he would sign it and send it back
22 to HSBC-USA.

23 For example, here these are CDs. And we don't have
24 any record from India. I don't know if those are CDs. They may
02:28 25 be in India. They could very well be in India, but I don't know

1 that because I don't have the records from India.

2 Same thing with this letter here. They talk about
3 these CDs. Arvind Ahuja knew they had invested his money in
4 India and Jersey. And we're going to come to what -- you're
02:28 5 going to find out under the law those are not foreign accounts,
6 and I'm going to explain to you in a little bit why.

7 Some of these people on this screen here would
8 probably be able to tell you why they did this, why they decided
9 to put the money into a sister bank. And by the way, there's
02:29 10 nothing wrong with it. As long as Dr. Ahuja gets the interest
11 rate he's entitled to, there's no problem. We're not
12 complaining. But they now -- but none of them came in to
13 testify so I don't know when and why this happened.

14 But I put up on the screen here what the government
02:29 15 tried to tell you is a wire transfer from Dr. Ahuja, Dr. Ahuja
16 would -- this is an example. He wire-transfers on November 3rd,
17 '05, a million dollars. Four days later they, being HSBC-USA,
18 wire-transferred to their sister bank in India and put it into
19 CDs, which is perfectly fine. But Dr. Ahuja is not doing that.

02:29 20 So one big issue is why didn't HSBC send him 1099s.
21 Why didn't they? I can't answer that. Don't know.

22 This is what we do know. Mark Miller explained to you
23 that HSBC-USA should have sent him 1099 forms and they didn't.
24 That's what we know. We know that.

02:30 25 Citibank. Thank the Lord for Citibank, because

1 Dr. Ahuja basically October 16, 2008, he made a similar type of
2 investment with Citibank, which Ms. Katju testified is right
3 next door in New York. These two banks are right next door to
4 each other in New York City.

02:30 5 Dr. Ahuja put a million dollars in Citibank. And when
6 he did that, they took his money and they invested it in a CD in
7 one of their sister banks in India. That's what they did. And
8 they put that money similar to what HSBC had done. So the money
9 goes from Citibank USA to Citibank India.

02:31 10 The difference is Citibank USA sends 1099 forms to
11 Dr. Ahuja with the India money on it, and it goes on his tax
12 returns. This is -- there's -- I think there's two in '08 and
13 one in '09. This one is \$122,000. We know, we absolutely know
14 that Citibank sent 1099 forms because they are the U.S. bank and
02:31 15 that's where Dr. Ahuja set up the bank account. And they are
16 the payor, and they may have decided that they want the money in
17 India. And it's okay, but they got to send him a 1099 form.
18 And it says India on it. It shows foreign tax paid.

19 And Mark Miller said, "I got this 1099. I put this on
02:31 20 his tax return." It's on his 2009 tax return. It's there.
21 It's on the return.

22 So I can't explain -- what I put on the screen here
23 is, HSBC does not issue 1099 forms for CD investments in India,
24 and Citibank does. And Mark Miller explained that Citibank did
02:32 25 it correctly and HSBC did it wrong. And we don't know why.

1 In fact, Ms. Katju testified that even she knew that
2 Citibank right next door was sending 1099 forms on accounts in
3 India out to their U.S. customers so they would know how much
4 interest to put on their tax return.

02:32 5 Now, we know that Dr. Ahuja's 1099s, he hired
6 professionals. The money ends up on his tax return. And he had
7 a good preparation system and it worked. We know that. When he
8 got a 1099 -- they're in evidence; every single one of them is
9 on his tax return. Here's a summary of them. I don't have to
02:32 10 go through it, belabor it. Every single one, every single year,
11 every single one is on his tax returns.

12 When HSBC sent him 1099 forms, he puts those on his
13 tax returns. There's one. When Citibank sends him a 1099, he
14 puts those on his tax returns. Here's his tax returns. They're
02:33 15 in evidence. Every year he reports the money on his tax
16 returns. Because he's not getting the 1099 forms, they're
17 coming to Branch, Branch is giving them to Miller, and they're
18 ending up on the tax return, every single year, every single
19 one.

02:33 20 Next. Yes. Dr. Ahuja realized in July of 2010, got a
21 letter from the government, he found out that he had not gotten
22 HSBC 1099 forms.

23 And he did the right thing. He filed amended tax
24 returns in May of 2011, a month before he was indicted in this
02:33 25 case, and he went back all the way to 2002. He went all the way

1 back to the first year that they didn't send him a 1099, and he
2 filed amended returns. And he's paid the government every dime.
3 Tax, interest, and penalties have all been paid a month before
4 this indictment came down.

02:34 5 And I showed it to you earlier, but this chart breaks
6 it down as to how you can calculate to come out to show that
7 overall it's 1.8 percent.

8 Bloomberg. Can I talk about Bloomberg for a minute?
9 The government has an e-mail that Arvind Ahuja sends to Ramit
02:34 10 Bhasin on July 3rd -- July 4, 2009, sends a Bloomberg article
11 that talks about HSBC and some foreign accounts. I can't
12 read -- it doesn't matter. It will be in evidence.

13 Here's my point. I don't know what that means. Ramit
14 Bhasin testified that Dr. Ahuja would send him news articles all
02:35 15 the time. He just would find something on Bloomberg that he
16 thought Bhasin -- they were close friends -- would be interested
17 in, and he would e-mail it to him. He e-mailed this one
18 Bloomberg article.

19 I think this represents the government's desperation
02:35 20 to try to prove something beyond a reasonable doubt when they
21 had no evidence at all. I don't know what this article means.
22 All I know is -- and Bhasin said he doesn't know. All he knows
23 is they never talked about it. He didn't make any comment when
24 he sent the e-mail, they don't talk about it afterwards, they
02:35 25 have no conversation about that article ever, and yet is that

1 the government's proof beyond a reasonable doubt of what?

2 So the first crime they charge, which is not reporting
3 the CD interest income, that is such -- I think that's Counts 1
4 through 4. And I put a red line through that because that
02:36 5 underreporting of interest income, they have not even come close
6 to proving beyond a reasonable doubt, willfulness.

7 So let me go to the next part of the case, which is
8 they say Dr. Ahuja did not comply with federal tax reporting
9 requirements because he doesn't file certain forms -- there's no
02:36 10 tax involved in this -- didn't check off certain forms or file
11 certain forms or check off the box. That's what this is. So
12 let's talk about this.

13 Put up on the screen --

14 Your Honor, I don't know whether at some point you
02:36 15 want to take a break or --

16 THE COURT: If the jury wants a break, we will break.
17 I didn't want to interrupt you.

18 MR. WEBB: It's okay to do that because --

19 THE COURT: Does the jury want a break? No, they're
02:36 20 ready to proceed. We'll break after you're done.

21 MR. WEBB: That's fine. Thank you.

22 THE COURT: Or sooner if the jury wants a break.

23 MR. WEBB: There's a question on the federal tax
24 return down at the bottom on Schedule B which is -- it's very
02:37 25 hard to read. I called it out for you. They contend that

1 Dr. Ahuja filed a false income tax return because that box is
2 checked "no," which is at any time during that year did you have
3 an interest in a foreign account.

02:37 4 Mark Miller testified that he's the one that checked
5 that box "no," not Dr. Ahuja.

6 FBARS is another form that's a separate tax form that
7 U.S. taxpayers are required to file to disclose a financial
8 interest in foreign accounts. There's no tax due, but they're
9 supposed to file this form called an FBAR. They say Dr. Ahuja
10 did not do that.

02:38 11 Now, there's two things the government has to prove,
12 so I want to get focused on this because the government just
13 sloughs over this. They first have to prove that Dr. Ahuja had
14 a financial interest. He actually had a foreign account, but
15 foreign account is defined by law as to what a foreign account
16 is. And I want to talk about it with you.

17 But even if they proved he had a foreign account, they
18 have to prove he acted willfully and that he actually knew that
19 he had to check that box off on Schedule B and he actually knew
02:38 20 about this separate thing called an FBAR. Let's talk about
21 those two elements because the government fails to prove either
22 one of them.

23 First of all, as far as whether he had foreign
24 accounts, this is the definition. It's going to be in the
02:38 25 instructions, this is what a foreign account is. A foreign

1 account has to be an account located and maintained in a foreign
2 country. You're going to be told by the Court that an account
3 is not located in a foreign country and is not a foreign account
4 if it's maintained with a financial institution in the United
02:39 5 States. So I don't want to get too technical, but that's -- if
6 the HSBC account is an account that's maintained in the United
7 States, even though they've invested in CDs in a foreign
8 country, that is not a foreign account for purposes of these tax
9 returns. That's why the last -- a foreign investment in a
02:39 10 domestic account is not a foreign account.

11 So what I'm going to walk through with you right now
12 is to show you why Dr. Ahuja doesn't even have foreign accounts
13 that are reportable. I think the government is contending -- I
14 can't tell for sure, but they're talking about Citibank, HSBC,
02:40 15 Oxus. I'm going to walk through these quickly, but the big ones
16 seem to be Citibank and HSBC.

17 Citibank in India is not a foreign account. How do we
18 know that? That's because Mark Miller, the government's own
19 witness Mark Miller, he explained to you in some detail that
02:40 20 that account at Citibank, Arvind Ahuja put money into that
21 account in New York. That is a domestic account. And just
22 because that account was investing in a CD in India does not
23 make it a foreign account that's reportable. That was his
24 testimony. That is their witness. Their witness explained that
02:40 25 to you. That's not my witness. That's their witness explaining

1 to you that that Citibank account is not a foreign account, and
2 therefore Dr. Ahuja or Mark Miller would not be checking off the
3 form "yes" or would not be filing this FBAR because it's not a
4 foreign account, according to their witness. Because it's a
5 domestic account making a foreign investment.

6 He did explain that's exactly the situation with HSBC.
7 HSBC is exactly the same. HSBC is clearly a domestic account in
8 New York that Dr. Ahuja invested -- sent all his deposits to.
9 That account was maintained in New York, and therefore the same
10 logic from Mr. Miller clearly applies. The HSBC account is a
11 domestic account in New York. That account, though, has made
12 investments in CDs in India and Jersey, and that's called a
13 domestic account making a foreign investment.

14 That's -- the only witness in this case that has
15 explained that to you is Mark Miller, and that's his testimony.
16 He's the government's witness. And I don't think they
17 challenged his testimony. He's their witness.

18 So let's focus -- because the focus of this case has
19 been on HSBC, I want to remind you of the evidence that HSBC is
20 an account that is maintained in the United States. I put on
21 one screen the major facts that I don't think can be disputed at
22 all.

23 On August 17, Dr. Ahuja opens an account not in India,
24 not in Jersey, in HSBC-USA in New York by wire-transferring that
25 amount of money I talked to you about. Every deposit he made

1 over the next seven years, all of those deposits go to HSBC-USA.

2 There's no evidence that Dr. Ahuja ever got bank
3 statements from anybody other than HSBC-USA. They were
4 maintaining his account in New York, but they were making
02:43 5 investments in India and Jersey. There's no question they were
6 doing that. And every single e-mail in this case, every contact
7 with Dr. Ahuja, are from bankers in New York employed by
8 HSBC-USA. These are not bankers in India or Jersey.

9 And we also know that when Agent Cook testified all
02:43 10 the documents you have in this case, every single record that
11 the government has offered into evidence, every single one was
12 maintained at HSBC-USA. They served a subpoena on HSBC-USA.
13 They got every document, all those documents are maintained in
14 the United States.

02:43 15 So the requirement that HSBC is an account maintained
16 in the United States is overwhelming. And so the fact that
17 HSBC-USA is investing his money in India in investments, or in
18 Jersey, according to Mr. Miller that is not reportable as a
19 foreign account. And nobody has contradicted his testimony,
02:44 20 nobody at all.

21 There's the deposits. Tandon was the main person he
22 dealt with. He's employed by HSBC-USA.

23 Ms. Dhanani, she's employed by HSBC-USA. His
24 statements say if you have any questions, call HSBC-USA. That's
02:44 25 what he's told.

1 This is on his bank statement. His bank statement he
2 gets every month says, "If you deposit money with us in
3 New York, these funds are held by HSBC-USA." That's what it
4 says.

02:44 5 Agent Cook said, "When I wanted to get records that
6 relate to his account, I went to HSBC-USA to get the records."

7 So there's no question that Dr. Ahuja and HSBC have
8 maintained a domestic account making a foreign investment, and
9 there's no -- for the government to contend that they've proven
02:45 10 beyond a reasonable doubt that that's a foreign account, just
11 look at the definition the Court gives you. That's simply not
12 true and not correct.

13 Oxus. I don't know what they're going to -- I don't
14 know if they contend that Oxus is some kind of foreign account.
02:45 15 I don't know. They seem to say so in some of the -- anyway,
16 I'll listen to their argument. Because here's what we know.
17 Dr. Ahuja clearly invested a million dollars in a fund called
18 Oxus Fund Management. But there's no evidence he had any
19 account there. He made an investment there.

02:45 20 Just so you know, the government has not brought in
21 any records from Oxus in India. We don't have any account
22 documents; we don't have any account number; we don't have any
23 account statements. I don't think there's any account in India
24 in Oxus so I don't know what the evidence is that's a foreign
02:46 25 account.

1 Mr. Bhasin said it was an investment in Oxus.

2 Then there's another company called MF Global.

3 MF Global, if you remember, this is what Mr. Bhasin explained,
4 after Dr. Ahuja had given his friend Mr. Bhasin a million
02:46 5 dollars to invest in this new company called Oxus, they lost
6 \$500,000 in the first six months. Then Bhasin goes to Dr. Ahuja
7 and says, "I don't trust my partner anymore in running this
8 fund. Let's get the money out of that fund, and I'm going to
9 put it over into something called MF Global."

02:46 10 And so Dr. Ahuja says yes, and they do that. And we
11 don't know exactly what happened because we don't have any
12 account records. I have no records from MF Global. We don't
13 have any bank, we don't have any account record, we have no
14 account statements, we have no opening statements. I don't know
02:47 15 what that is. But somehow if the government's contending that's
16 a foreign account that should have been reported on these forms,
17 they have not proven that even close.

18 Then there's another bank called HDFC. According to
19 Bhasin, that's a bank in India. And we know that there's a
02:47 20 draft -- there's a draft from Dr. Ahuja's CD for some reason
21 that goes to HDFC. But there's no evidence there's any account
22 there. They didn't come -- there's no -- we have no record of
23 any account at HDFC. So nobody in this courtroom knows whether
24 there's an account in HDFC. We don't know. There's no account
02:47 25 records, there's no opening statement, there's no statements,

1 there's no doc -- there's nothing. Zero. Zero. So I don't
2 know.

3 They get rebuttal after I get done talking so I don't
4 know what they're going to say, but I don't know how they've
02:48 5 proven that that's a foreign account. They don't have any
6 records of it. They didn't bring any records in here. So these
7 accounts, by their own testimony, are not foreign accounts.

8 More importantly, they can't prove that he acted
9 willfully in not checking off this box on Schedule B or filing
02:48 10 this separate FBAR.

11 First of all, this is the instruction you're going to
12 get. The government's going to have to prove to you that
13 Dr. Ahuja actually knew of his legal duty to check off
14 Schedule B, Part III, line 7a; that he had no interest in
02:48 15 foreign accounts; that he's got to actually know that question
16 is down at the bottom of that form and that it got checked by
17 Miller incorrectly.

18 The word "willfully" on the FBAR violation, the same
19 thing. For the FBAR violation the word "willfully" means that
02:49 20 the defendant knew it was his legal duty to file an FBAR and
21 intentionally failed to do so. They have to show that he knew,
22 there's something called an FBAR form, and he knew that it
23 wasn't filled out. If they can't prove that, they can't prove
24 that he acted willfully.

02:49 25 So let's talk about what the evidence is on this

1 issue. As far as 7a is concerned on Schedule B, let's talk
2 about -- we'll talk about them separately. First question 7a on
3 Schedule B, and then I'll talk about the FBAR.

4 Schedule 7a, I asked Miller directly: You never
02:49 5 personally ever discussed with Arvind Ahuja that on Schedule B
6 there's that one question at the bottom of the form called 7a
7 that the government called -- did you ever discuss that specific
8 question on the tax return with Dr. Ahuja?

9 No, I did not. No, I did not.

02:50 10 Then I asked him: Who is the one that checked the
11 box?

12 He said: I did. My firm did.

13 Did Dr. Ahuja check that box?

14 No, he did not. That would be correct, he did not
02:50 15 check the box.

16 So we know that the government has no evidence that
17 anybody ever talked to Dr. Ahuja about that question which is at
18 the bottom of one of those pages. And I introduced into
19 evidence just one year's -- I wanted you to see just as a
02:50 20 demonstrative, on April 15th, he gets -- and this is year is
21 2007 -- 16 tax returns to be signed. They brought it to his
22 medical office, put it on his desk to be signed.

23 Now, therefore the government's theory is that he
24 went -- by the way, just the income tax -- the federal income
02:50 25 tax return in here when you look at it is about 100 pages long.

1 They're theory is that he -- he somehow found his way
2 to a schedule called B and then down at the bottom of the page
3 knew that that question was there. That's their theory of this
4 case. That's ridiculous. And the evidence that he knew that
02:51 5 that box was checked "no" and filed a false return, there is no
6 evidence that will support that whatsoever in this record.
7 Zero.

8 Now, FBARs. Let's talk about FBARs. This is even
9 more interesting. I listened to counsel, and here's what he
02:51 10 told you. What is the evidence that Dr. Ahuja was aware of
11 FBARs? By the way, I haven't seen one of these forms in this
12 courtroom. I don't think there's any here. There's some form
13 called an FBAR. And this is the government's theory about why
14 he knowingly willingly filed a false return.

02:52 15 I asked Miller: Did you ever actually use the term
16 "FBAR" with Dr. Ahuja? And he explained that he never did,
17 never did talk to him specifically about what an FBAR is. He
18 did talk to him about the fact, told him, he said he did talk to
19 him about the fact that there is a reporting requirement, but he
02:52 20 doesn't talk to him about the specific FBAR requirement. He
21 said he did not.

22 So I said: So, by the way, you've explained what you
23 said to Dr. Ahuja about the enhanced focus on foreign bank
24 accounts. Did you say anything different in the grand jury
02:52 25 about that?

1 No, not to my knowledge.

2 He never specifically -- let me come back.

3 Several times before you he explained that he never
4 actually ever used the term "FBAR" with Dr. Ahuja, ever.

02:53 5 Bhasin, their other witness, here's what he told you
6 about FBARs. He said he spent his whole life in the banking
7 world. He's an expert banker. He said he never heard of FBARs.
8 Never heard of it. And then he went on to say not only did he
9 not ever hear about it, he doesn't think accountants know about
02:53 10 FBARs. That's the testimony from another government witness in
11 this case.

12 Now, I want to focus on this instruction right here.
13 The word "willfully," the defendant acts willfully if he knew it
14 was his legal duty to file an FBAR and intentionally failed to
02:53 15 do so.

16 The prosecutors in opening statement didn't show this
17 to you, but he said -- he pointed over here and he said:
18 There's this form down here. And if you look at this form,
19 here's what it says. So this is their theory. Please read this
02:54 20 with me carefully.

21 Their theory is the following: That in that
22 Question 7a, after it talks about if you have any foreign
23 account, it says "See page B-2 for exceptions and filing
24 requirements for Form TDF 90-22.1."

02:54 25 He just told you because that language is there

1 Dr. Ahuja must have known about FBARs.

2 There's not a single word there about an FBAR that is
3 about a form. So I've got the returns here. I don't know -- I
4 don't know where that is. There's nowhere -- if Dr. Ahuja -- I
02:54 5 don't know where Dr. Ahuja would go to to find that -- where --
6 where is page B-2 that's going to describe something called a
7 TDF 90-22.1, because it's not in these returns.

8 It's not here. It's not in the courtroom. I looked
9 last night. I don't think there's anything in evidence that
02:55 10 would show you what they say he should have gone to look at and
11 therefore when he looked at it he would know: Oh, there's a
12 form called FBAR. I should have filed it.

13 That is -- to say that that's proof beyond a
14 reasonable doubt, that he didn't file an FBAR and knew about an
02:55 15 FBAR, that's so -- so weak evidence, not even close to proof
16 beyond a reasonable doubt.

17 The fact that a -- this is an instruction the court's
18 going to give you. Just because Dr. Ahuja signs a tax return
19 does not by itself proof beyond a reasonable doubt the
02:56 20 taxpayer's knowledge of the contents of the return.

21 The instruction goes on to say that you need to look
22 at the surrounding facts and circumstances to decide what that
23 means, but the government has to prove it beyond a reasonable
24 doubt.

02:56 25 And you've got in evidence the number of returns he

1 got every year to sign on April 15th. And the government's
2 theory is that somehow he somehow managed to get through and
3 understand that that form wasn't filled out. There's no
4 evidence to support that.

02:56 5 And the last point on willfulness, is my most
6 important, I think. There's no evidence that Dr. Ahuja, as a
7 medical doctor, was ever aware of the difference between a
8 domestic account having a foreign investment and a foreign bank
9 account.

02:57 10 Miller explained it to you. You're jurors in a
11 courtroom. So Miller comes in here and he tells you there's a
12 difference under the law if you have an account -- same thing
13 the court's gonna tell you -- if you have an account that is
14 maintained in a financial institution in the United States, even
02:57 15 though it invests in or holds an asset in a foreign country,
16 that's not a foreign account for purposes of FBAR reporting
17 purposes. That's exactly what -- that's -- Miller told you the
18 same thing that the court's gonna tell you in the instructions
19 today; that that's not a foreign bank account.

02:57 20 So Miller went on to explain to you -- the government
21 wants to make this, like, "Oh, this is just such a little simple
22 case." Miller explained to you that whether -- whether or not
23 something is a foreign account that's got to be reportable or
24 whether it's a domestic account that's making a foreign
02:58 25 investment, he said, their witness said, that's a complicated

1 issue. That complicates even tax preparers.

2 I asked him, I said: "Now, as far as this issue of
3 whether something is a domestic account making a foreign
4 investment or is a foreign account, is that something -- is that
02:58 5 something that actually is an issue that has been discussed
6 among professional groups that has caused some confusion?

7 "ANSWER: Absolutely."

8 So if this issue of whether something is a domestic
9 account making a foreign investment or whether it's a foreign
02:58 10 account, is something that is confusing to professional tax
11 preparers -- which, by the way, is their evidence. He's their
12 witness. -- then how can they say that, because Dr. Ahuja, a
13 doctor, doesn't -- and, by the way, Miller then explained -- I
14 asked him this question:

02:58 15 "And the testimony that you gave the jury earlier
16 about the difference between a domestic account making a foreign
17 investment and an actual foreign account that has to be reported
18 for federal tax purposes, did you ever try to explain that to
19 him, to Dr. Ahuja?

02:59 20 "I did not."

21 He explained he didn't -- professional people that
22 prepared these returns are confused on this issue, and he
23 certainly didn't talk to Dr. Ahuja about it. And yet the
24 government, the government wants you to believe that Dr. Ahuja
02:59 25 somehow understood this and somehow should have known that what

1 he had was foreign accounts and not a domestic account making a
2 foreign investment.

3 So -- and, by the way, one other point that came out
4 yesterday. If the investments in India, there may be a foreign
02:59 5 tax paid, but that doesn't make it a foreign account.

6 Dr. Miller told you that. That does not make it a foreign
7 account.

8 What it does create is a foreign tax credit, which
9 Agent Cook explained yesterday because Citibank sent a 1099 form
02:59 10 to Dr. Ahuja, Dr. Ahuja had to pay taxes in India, which he did.
11 And then Miller took a foreign tax credit.

12 But Miller -- but Mr. Cook explained, that's not true
13 for HSBC because he didn't get a 1099 form. So there's no
14 foreign tax credit in connection with any of the HSBC CDs
03:00 15 because there was no -- there was no 1099 received.

16 So willfulness. The government has -- on this second
17 charge, they've not proven -- let me come back. I want to talk
18 about one issue.

19 There was a conversation between Miller and Dr. Ahuja
03:01 20 and Tom Branch in August of 2009, and Miller testified he
21 recalled generally telling Dr. Ahuja about new penalties
22 regarding reporting foreign accounts. And Dr. Ahuja said that
23 he would follow up with a couple of bank or brokerage accounts.

24 Now, Miller had described these meetings as completely
03:01 25 chaotic where Dr. Ahuja comes in in scrubs out of surgery and

1 sits in these tax planning meetings, and Miller testified that
2 Tom Branch is the professional manager that was in this meeting.
3 And that if somebody was going to follow up, according to
4 Miller's testimony, he would have expected Tom Branch to follow
03:01 5 up.

6 We don't know if that happened because Branch was not
7 called as a witness by the government, and we don't know. What
8 we do know is, Miller never discussed with Dr. Ahuja the
9 specific reporting requirements of question 7a for FBARs in that
03:02 10 meeting. And that's what these instructions say would have had
11 to have happened. That Dr. Ahuja has to actually know about the
12 legal duty to report on Schedule B, Part III, line 7a, which
13 Mr. Miller said he never discussed with Dr. Ahuja.

14 And for the FBAR, the legal instruction is the
03:02 15 defendant would act willfully if he actually knew about the FBAR
16 and knew about his duty to fill it out. And there's no
17 evidence, other than the government saying, "Well, he should
18 have figured that out from looking at the return because you
19 should go to TD something or other and read it." That's the
03:02 20 only evidence of willfulness on the FBAR.

21 And this is Miller's testimony.

22 "Tom Branch was in that meeting; is that correct?

23 "ANSWER: That's correct.

24 "And Tom Branch -- if someone was going to get back to
03:03 25 you as a follow-up, who would you expect that person to be?

1 "ANSWER: Tom Branch."

2 That was the testimony that was given by Mr. Miller.
3 And Tom Branch, we know, the government has chosen not to call
4 him as a witness.

03:03 5 MR. SULLIVAN: Your Honor, may we approach briefly?

6 THE COURT: Approach.

7 (At side bar on the record.)

8 MR. SULLIVAN: Your Honor, I just want to make sure,
9 because Mr. Webb has repeatedly said that the government didn't
03:03 10 call Mr. Branch, are we allowed to say that they could have
11 called Mr. Branch? Because --

12 THE COURT: No.

13 MR. SULLIVAN: What is the law?

14 THE COURT: You cannot. The defendant has no
03:04 15 obligation to produce any witnesses. So --

16 MR. SULLIVAN: We're stuck with it?

17 THE COURT: You're stuck with it.

18 MR. SULLIVAN: Thanks for the good news.

19 Mr. Webb, it's been about an hour 30 minutes since
03:04 20 you've begun; how much additional time?

21 MR. WEBB: 10 minutes.

22 THE COURT: We'll take a break.

23 MR. WEBB: Thank you.

24 THE COURT: I think they're restless.

03:04 25 (End of discussion at side bar.)

1 THE COURT: This is a good time to break. Please do
2 not discuss the case in the jury room. You may leave your
3 notebooks here.

4 THE BAILIFF: All rise.

03:04 5 (Jury out at 3:04 p.m.)

6 THE COURT: It should be about 10 to 15 minutes before
7 the jury is ready to continue. So we will get done as quickly
8 as we can.

9 (Recess taken at 3:05 p.m., until 3:28 p.m.)

03:28 10 (Jury in at 3:28 p.m.)

11 THE COURT: Please be seated.

12 Mr. Webb?

13 MR. WEBB: Thank you very much, Your Honor.

14 THE COURT: You may move that lectern over so that --

03:29 15 MR. WEBB: Like this?

16 THE COURT: That way you will be closer to the mic.

17 MR. WEBB: When we took our afternoon break, I was
18 talking to you about what is it the government must prove
19 regarding the allegations that Dr. Ahuja filed false income tax
03:29 20 returns because he didn't report foreign accounts either on
21 Schedule B or in connection with what is called the FBAR. And
22 we were talking about these two elements or requirements that
23 the government must prove, and we were talking about
24 willfulness.

03:29 25 The government argued to you during their closing

1 argument that after Dr. Ahuja had met with Mark Miller in August
2 of 2009 and Mark Miller had discussed with him foreign accounts,
3 that then, according to the government, Dr. Ahuja started to
4 conceal his foreign accounts.

03:30 5 And he used two examples. He said, first of all, he
6 closed out an account in Jersey in the fall of '09. That is
7 true. But the account in Jersey was a very small amount. HSBC
8 had put most of Dr. Ahuja's money in India. There was some in
9 Jersey, but not a lot. You'll see it in the records. When
03:30 10 Arvind Ahuja closed out the Jersey account, he didn't close out
11 the accounts in India. He didn't notify HSBC in New York now I
12 want to close all -- you've got all these CDs that you invested
13 for me in these foreign accounts; I want them all closed. That
14 didn't happen. Nothing like that happened. Those accounts
03:30 15 stayed open because Dr. Ahuja did not believe that he had
16 anything to hide.

17 HSBC had put his money into India and Jersey. They
18 had made the decision to do that for whatever their reasons are
19 for HSBC, and they paid him the amount of interest that he had
03:31 20 coming to him. And Mr. Miller told you that is a domestic
21 account, HSBC-New York investing in CDs in foreign countries,
22 and that's not reportable. That's the testimony that you have.

23 Now, when Dr. Ahuja closed out the Jersey account,
24 that's not an act of concealment. He left all the accounts open
03:31 25 in India. He didn't do anything with those accounts in India.

1 He left them wide open.

2 Then the other act that the government talked about
3 was supposedly, according to them, Dr. Ahuja transferred some of
4 his India CDs into whose name? His wife's. Well, how is that
03:31 5 an act of concealment? They filed joint tax returns. He didn't
6 transfer it into some secret shell name or some shell company or
7 some phony name. It's transferred -- and by the way, he still
8 kept most of it in his name. So the idea that those are acts of
9 concealment simply is not supported by the evidence.

03:32 10 So to close out this issue, on the issue about whether
11 or not the government has proven that Dr. Ahuja, A, had foreign
12 accounts that should be disclosed on his tax returns, I walked
13 through with you in some detail based on the legal definition of
14 what a foreign account is. The government clearly has not
03:32 15 proven beyond a reasonable doubt that Dr. Ahuja even had a
16 financial interest in an account in a foreign country, as it is
17 defined by the judge's instructions.

18 So all I can respectfully ask of you as jurors when
19 you go back to the jury room and you begin your deliberations,
03:33 20 look at the instructions. It clearly states in the instruction
21 that an account maintained in the United States that is simply
22 making investments in foreign investments is not a foreign
23 account for purposes of disclosure on your income tax return.

24 That was the testimony by Mark Miller, it's going to
03:33 25 be the instruction the judge is going to give you, and I've

1 walked through the evidence is overwhelming that Dr. Ahuja
2 maintained an account at HSBC-USA that made foreign investments
3 and that's not, as it turned out under the law, a foreign
4 investment.

03:33 5 On the issue of Dr. Ahuja's willfulness, Dr. Ahuja
6 actually has to know that he is supposed to fill out and check
7 off the Question 7a on Schedule B and has to know that there's
8 this separate form called an FBAR. And the government has
9 clearly failed to prove beyond a reasonable doubt either one of
03:34 10 those.

11 I'm almost done. There's one last issue.

12 I talked about both of the areas of false returns that
13 the government has alleged in this case. One other topic I just
14 want to talk to you about is something that happened that was
03:34 15 unusual yesterday. We have known throughout this trial that
16 there were -- that the government did not obtain any evidence
17 from HSBC-India or HSBC-Jersey. And so we asked Agent Cook
18 questions yesterday because the government has the burden of
19 proof, and documents in India or Jersey could very well shine
03:35 20 light on this case. I don't know what they would show but we
21 wanted to find out, so yesterday I got it on the screen. We
22 asked Agent Cook whether he served a subpoena on HSBC-India.

23 He said: "No."

24 And the question: "You didn't think it would be
03:35 25 important to retrieve documents from HSBC-India as part of your

1 investigation?"

2 His answer would be: "I would have loved to. That
3 would have been great."

4 So I guess he thought it would be nice to do that, to
03:35 5 complete and bring evidence before you.

6 But he said: "But you didn't do it."

7 His answer was: "My subpoena authority or the
8 subpoena authority from the court doesn't extend beyond the
9 United States."

03:35 10 And we started to ask him questions about that. "So
11 you just subpoenaed HSBC; is that right?"

12 And he says: "I'm not sure what the exact language
13 was, but HSBC in the United States."

14 So they only subpoenaed HSBC in the United States.

03:36 15 Next question: "And those are the documents that have
16 been admitted into evidence are the ones that you received from
17 the United States?"

18 "ANSWER: Yes.

19 "And you never pursued any other form of investigation
03:36 20 in India, correct?"

21 "Answer: Correct."

22 We asked him about a process called letters rogatory,
23 to obtain evidence in foreign countries. And he told you as an
24 IRS agent:

03:36 25 "QUESTION: Have you ever seen any reference to

1 letters rogatory on the Department of Justice website?

2 "ANSWER: I don't even know how to spell that," was
3 his answer.

4 He's the case agent working the case on Arvind Ahuja
03:36 5 involving CDs in India and Jersey.

6 "QUESTION: You didn't think it was important in the
7 course of this investigation to familiarize yourself with these
8 treaties between India and the United States that deal with
9 obtaining evidence, including testimony in foreign countries,
03:37 10 did you?

11 "ANSWER: Correct.

12 "QUESTION: Now, during our trial, Agent Cook" --

13 So that's Agent Cook's testimony. He decided that he
14 had no ability to get any evidence in India or Jersey to shine
03:37 15 the light on what we might be able to find out that might be of
16 assistance, for example, to Dr. Ahuja in this case, or to you as
17 jurors in this case. He said he couldn't do it.

18 So I then called former Special Agent -- supervisory
19 Special Agent Ron Braver, who told you that he had had 25 years
03:37 20 of experience before he retired as a special agent with the IRS,
21 and then he was a supervisory special agent supervising other
22 special agents. 25 years of experience. Because I thought you
23 were entitled to know that what Agent Cook told you was
24 factually wrong. You were entitled to know that as jurors in
03:38 25 this case.

1 And so I asked Agent Braver -- former Agent Braver --
2 he's retired now in the private sector.

3 I asked him: "Now, during our trial, Agent Cook has
4 told the jury that he was not aware of any way that an IRS Agent
03:38 5 could obtain evidence in India in connection with an
6 investigation he was conducting. Based on -- factually do you
7 agree or disagree with that testimony?

8 "ANSWER: I would disagree."

9 I then said: "Can you just summarize for the jury the
03:38 10 different methods and ways IRS special agents have to obtain
11 evidence in foreign countries if they feel it's necessary on a
12 case?

13 "ANSWER: Sure. You have your manual, which kind
14 of -- the IRS manual."

03:39 15 So Mr. Braver is describing the IRS manual that
16 special agents operate under.

17 "The manual lays out different methods you can use to
18 obtain evidence. And you have the IRS international section of
19 the criminal investigation that also assists you in helping you
03:39 20 obtain records overseas. There's various methods using
21 Interpol, your foreign attachés that are stationed around the
22 country, around the world, and again the international section.
23 And you use letters of interrogatory. There's various treaties
24 with various countries, and you can do it both informally and
03:39 25 formally."

1 He explained to you that if you want to obtain
2 evidence in foreign countries as an IRS agent it's in the
3 manual, the manual that IRS agents have, and there's ways to do
4 it both formal and informal to obtain evidence from foreign
03:40 5 countries.

6 "QUESTION: So there are two different ways to use
7 letters rogatory to get evidence in foreign countries?

8 "ANSWER: Correct.

9 "QUESTION: For example, you said that you can use the
03:40 10 letters rogatory to get both documents in foreign countries and
11 testimony; is that correct?

12 "Correct.

13 "QUESTION: And if you obtain -- if you want to obtain
14 testimony in a foreign country to be presented here in the
03:40 15 United States, are you able to take depositions in the foreign
16 country that then can be sworn testimony that can be presented
17 in a court of law in the United States?

18 "ANSWER: Yes.

19 "And what process do you follow to obtain documents,
03:40 20 for example, by letters rogatory? How do you do that?"

21 And he said: "Same method. It's a formal request.
22 You request it from the country, and the country responds
23 formally in writing."

24 Former Agent Braver explained to you that there are
03:41 25 ways to get evidence in foreign countries, both formal and

1 informal.

2 "QUESTION: Now, over the years when you were a
3 special agent or a supervisory special agent during those
4 20-some years, did you frequently obtain evidence from foreign
5 countries through both the formal and the informal process?

03:41

6 "ANSWER: Frequently would be -- on numerous
7 occasions.

8 "QUESTION: That's fine. On numerous occasions.

9 "Yes.

03:41

10 "And did you do it both formally with letters rogatory
11 and informally with the process you just described?

12 "ANSWER: Yes."

13 And then I said: "And for example, during your career
14 as a special agent, did you obtain evidence through letters
15 rogatory from the nation of India?"

03:41

16 And he said: "Yes."

17 So the testimony yesterday from Agent Cook that there
18 was no way to go to India to help get records that might help us
19 in this case was factually wrong.

03:42

20 And so I tell you that because we are entitled in this
21 case to find out whether or not there's other evidence that
22 might show, for example, that Dr. Ahuja was never told that he
23 wouldn't get 1099s, or there might be records that would show
24 why did HSBC start setting up the CDs in India, and why did they
25 start setting up the CDs in Jersey.

03:42

1 I don't know what would be in those records because
2 the government never went to get those records to complete their
3 investigation. And it's the government that has the burden of
4 proof to prove this case beyond a reasonable doubt.

03:42 5 I respectfully suggest to you that I've now discussed
6 with you the two different courses of conduct that the
7 government contends are the false statements in this case. I
8 walked through the evidence in a great deal of detail because I
9 believe you as jurors are entitled to know exactly what the
03:43 10 evidence is, exactly what the legal requirements are, because I
11 want you to understand how that fits into the government's
12 burden of proving this case beyond a reasonable doubt.

13 I'm going to stop talking now. Our work is almost
14 done as lawyers. Your most important work is about to begin,
03:43 15 which is to go back in that jury room, review the evidence
16 carefully, understand the Court's instructions that will be
17 given to you later, and then you apply that law to these facts.

18 At the outset, let me as I wind down thank you for
19 agreeing to serve as jurors in this case. I know that it's not
03:44 20 an easy task. I know you're taken away from your family, your
21 jobs, and other responsibilities. I think I can speak on behalf
22 of all of us, I greatly appreciate and Dr. Ahuja greatly
23 appreciates your service as jurors.

24 All I ask you to do is go back in that jury room, be
03:44 25 fair and impartial, review the evidence carefully, look at the

1 legal requirements that we talked about and that the judge will
2 describe to you, and I respectfully suggest to you that based on
3 that the proper verdict in this case would be a verdict of not
4 guilty as to Dr. Ahuja on each and every count of the
5 indictment.

03:44

6 Thank you for listening to me.

7 REBUTTAL CLOSING ARGUMENT

8 MS. SISKIND: Your Honor, can we switch back to the
9 government's computer?

03:45

10 Ladies and gentlemen, in the hour and a half that
11 Mr. Webb was just talking to you, he mentioned shell
12 corporations and letters rogatory and stamps on passports and
13 golf course records. He talked a lot about what kind of
14 evidence the government did not show to you in this case, but he
15 spent very little time going over what the government did put
16 into evidence, the records that do prove the charges in this
17 case. So now before you go back and you finally have an
18 opportunity to talk about this case among each other and
19 deliberate on the charges, I really want to refocus you on what
20 this case really is about.

03:45

21 Arvind Ahuja knew he had foreign bank accounts. He
22 knew that the funds in those accounts were invested in
23 certificates of deposit, that they were earning interest income,
24 sometimes as high as 10.8 percent. He knew all of those things.

03:46

25 But he concealed those facts from his accountant, Mark

1 Miller. And because a tax return is only as accurate as the
2 information a client gives to his accountant, the tax returns
3 that Dr. Ahuja filed with the IRS for the years 2006 through
4 2009 were false, and no FBARs were filed for the years 2007
5 through 2009.

6 That's what this case is about, and that's what the
7 evidence has proven beyond a reasonable doubt.

8 I want to talk about what Mr. Webb was talking about,
9 the difference between foreign bank accounts and domestic
10 accounts that have foreign investments in them. Because the
11 evidence in this case proves that Arvind Ahuja had foreign bank
12 accounts. He did have a bank account in this country with HSBC.
13 You saw the records in Exhibit 72. Mr. Webb pointed out some
14 language at the bottom of the one of those pages about how the
15 account was located in the United States.

16 But those statements, take a look at them, there's not
17 many of them in Exhibit 72, the CDs that you heard so much about
18 in this case, you won't see a word about CDs on there being
19 invested in that account. What you will see are wire transfers
20 of millions of dollars from his account in the United States to
21 India to be invested in CDs in India. That's what the records
22 show.

23 Now, Mr. Webb flashed for a couple moments on the
24 screen some wire transfer record from 2001, and I'm not sure if
25 you got a chance to see it because it was up there just for a

1 second. But take a look at that because that wire transfer has
2 nothing to do with India. That was a domestic wire transfer.
3 That's not one of the wire transfer records that Agent Cook went
4 through when he was on the stand.

03:48 5 When Mr. Sullivan was talking in closing argument, he
6 showed you that summary that gives all of the wire transfers,
7 and you can look at them. Those are wire transfers from the
8 defendant's account in the United States to his account in
9 India, that account ending 7702.

03:48 10 Now, Mr. Webb wants you to believe that it was the
11 bank that was sending the defendant's money to India, but that's
12 not what the records show. It's the defendant's bank account,
13 and he was making wire transfers.

03:48 14 Ladies and gentlemen, do you really think that bankers
15 at HSBC, without the defendant's knowledge, without the
16 defendant's consent, reached into his bank account and
17 transferred millions of dollars to other countries? Doesn't
18 make any sense. That's laughable, ladies and gentlemen. These
19 are the defendant's bank accounts, his money. He was the one
03:48 20 moving it around; no one else was doing it for him.

21 MR. WEBB: Your Honor, I object. Lack of evidence. I
22 object. No evidence to support that statement by Counsel.

23 THE COURT: Approach.

24 (At side bar on the record.)

03:49 25 MR. WEBB: I strenuously object to that last statement

1 by the counsel. The government lawyers had a right to ask the
2 jury to draw reasonable inferences from the evidence, and I
3 recognize that. However, Counsel just asked the jury to infer
4 that there must have been conversations between Arvind Ahuja and
03:49 5 HSBC bankers giving them directions and instructions or else
6 they would never have transferred that money.

7 There is -- there's no testimony from which you can
8 draw that inference, zero. And you're not allowed to draw an
9 inference from zero evidence. And so I object to the argument
03:50 10 because it's not supported by any evidence in the record at all.

11 THE COURT: What do you cite?

12 MS. SISKIND: All I'm directing the jury to look at is
13 the words on the page in Exhibit 72. The reasonable inference
14 to be drawn from Exhibit 72, the defendant's own bank account
03:50 15 records, is that he was the one directing the deposits. There's
16 nothing indicating anyone else made those transfers.

17 THE COURT: Let me look at 72.

18 (Brief pause.)

19 THE COURT: 72 -- no, that's 71.

03:51 20 MS. SISKIND: That is 72, Your Honor.

21 THE COURT: So you were talking about the statements
22 themselves.

23 MS. SISKIND: Yes. And I believe -- I believe the
24 first wire transfer comes in November of 2005.

03:51 25 THE COURT: All right. Go back and clarify that --

1 what you're basing your statement on. We'll proceed.

2 The objection is overruled.

3 (End of discussion at side bar.)

4 THE COURT: Proceed.

03:51 5 MS. SISKIND: Ladies and gentlemen, look at those
6 statements in Exhibit 72. Look at the words in the wire
7 transfer instructions. You won't see anything in there to
8 suggest that anyone other than the defendant was sending that
9 money from New York to India. These are his bank records, his
03:51 10 money, he knew the money was going to India.

11 So it's true, yes, he had a domestic account here.
12 There's really no question about that. But he also had bank
13 accounts in foreign countries. His accounts in India, that's
14 where the CDs were, that's where he was earning interest income,
03:52 15 not on the account in New York. Both Ramit Bhasin and Vandana
16 Katju told you that NRI accounts are located in India. They
17 provided uncontroverted testimony on this point.

18 Ms. Katju told you that HSBC-India maintains offices
19 or maintained offices here in this country to service NRI
03:52 20 clients like the defendant. But just because Vandana Katju or
21 other account representatives sat in an office in New York or
22 had USA in their e-mail address, that doesn't change that the
23 accounts were overseas, they were in India.

24 And that's what NRI means, non-resident Indian.
03:53 25 Individuals of Indian descent, living outside of India, who want

1 bank accounts in that country. Vandana Katju told you that.

2 So it's clear that the NRI accounts that the defendant
3 had with HSBC, those accounts were in India. So don't let the
4 defense confuse you on this point. There's HSBC-USA, there's
03:53 5 HSBC-India; they're two separate things.

6 The defense's own witness Ron Braver when he testified
7 yesterday, he told you that HSBC-USA and HSBC-India are separate
8 legal entities. They're separate legal entities. And the
9 defendant had bank accounts with both.

03:53 10 The letters written by the defendant to the bank
11 confirm that he knew he had foreign accounts. And I went
12 through some of them very quickly with Agent Cook during his
13 redirect examination yesterday. There were letters the
14 defendant signed addressed to HSBC-India, letters he signed
03:53 15 directed to HSBC-Jersey. He knew he was not talking about
16 domestic bank accounts in those letters.

17 Take a look at some of these letters when you get back
18 to the jury room. You can see most of them are one page,
19 they're short, to the point, nothing confusing about them, and
03:54 20 they're addressed in the top left-hand corner to banks in other
21 countries.

22 The defendant signed all of the letters that the
23 government put into evidence. It doesn't matter who drafted
24 them, it doesn't matter where they were kept. The defendant
03:54 25 signed them, and they talk about accounts located in foreign

1 countries. They tell the bank what to do with his money in
2 India and what to do with his money in Jersey.

3 The letters also refer to account numbers in India and
4 Jersey. Take a look at the account numbers on some of those
03:54 5 letters, and we talked about them with Agent Cook yesterday.
6 Those are not the same as the account number you'll see on the
7 statements in 72 which is his HSBC-USA account. Those are
8 different account numbers and the defendant knew they were
9 different.

03:55 10 When you get back to the jury room, look at these
11 letters. The defendant refers to them as accounts. He doesn't
12 refer to them as investments. He knew that he had bank accounts
13 in foreign countries.

14 And if you need further convincing that the defendant
03:55 15 knew that this money over in India was not just some foreign
16 investment, I would suggest you take a look at Exhibit 50. This
17 single sheet of paper, Exhibit 50, a letter from the defendant,
18 blows the defense's entire theory of this case out of the water.

19 So what is Exhibit 50? It's a letter signed by the
03:55 20 defendant to HSBC-New York in July of 2008 in which he says:
21 "With reference to the above subject, you are requested to
22 please close my above checking account with you."

23 And that account number that you see in the subject
24 line here, that's his New York account. July 2008, he writes
03:56 25 this letter to the bank, this simple, to-the-point, concise

1 letter, closing his New York account.

2 And yet, he kept earning interest income. Agent Cook
3 told you there were records and screen shots from 2009. And the
4 defendant kept writing letters to HSBC-India and HSBC-Jersey
03:56 5 after he wrote this letter closing his New York account.

6 So if he thought that all of this money was based in
7 New York and that someone else was sending it over to India and
8 Jersey, then why is he still managing accounts in India and
9 Jersey after he closes the New York account? It doesn't make
03:56 10 any sense.

11 Look at Exhibit 54. That's a letter he wrote to HSBC
12 in India after he wrote this letter in Exhibit 50. Exhibit 54
13 is him trying to change the correspondence address on his
14 account. Why would he be writing this letter to change an
03:57 15 address on an account if he didn't think it existed anymore?

16 Look at Exhibit 59 and Exhibit 61, letters from July
17 2009, a full year after he closed his account in New York.
18 Those letters direct the bank to transfer money from his
19 accounts in Jersey and in India to a travel agency.

03:57 20 If the account was closed, which is what Mr. Webb --
21 Mr. Webb wants you to believe, that this is related to that
22 New York account, but if the New York account was closed, how
23 could he be telling the bank what to do with the money?

24 Because the defendant closed his New York account in
03:57 25 July of 2008, the defendant's argument that these accounts were

1 really based in New York but with investments in India and
2 Jersey doesn't make any sense. It's impossible to access funds
3 in an account that doesn't exist anymore.

4 Now, there's no dispute in this case that the
03:58 5 defendant did not receive Forms 1099 reflecting the interest
6 income he earned from the CDs in India. He did receive 1099s
7 from HSBC, and the defense has shown you some of those. He
8 reported that interest income on his tax return.

9 But look at how much he reported: \$396 in 2006. \$167
03:58 10 in 2007. And in 2008, the year that he closed the New York
11 account, he reported \$51 in interest income.

12 Ladies and gentlemen, the minute the defendant saw
13 those Forms 1099, he would have known they didn't include his
14 interest income from the India CDs. The numbers were just too
03:58 15 low. He knew that he had put millions of dollars over in India,
16 that he was earning interest at rates up to 10.8 percent. The
17 dollar figures on those HSBC 1099s are so incredibly low that
18 the defendant knew they were not reporting his interest income
19 from his CDs.

03:59 20 The defendant is trying to confuse you on this point.
21 He's trying to suggest that HSBC-USA, they were the one required
22 to send him a Form 1099 to report the interest income. They
23 want you to believe that the bank somehow made a mistake, but
24 there was no mistake. HSBC in the United States was never going
03:59 25 to report this interest income on a Form 1099 because the money

1 wasn't in that bank. The money was in India.

2 And as you've now heard from both Mark Miller and
3 Ronald Braver, one prosecution, one defense witness, foreign
4 banks don't issue Forms 1099. HSBC-India was never going to
03:59 5 send the defendant a Form 1099 for that account. Mark Miller
6 knew it; Ronald Braver knew it; and the defendant knew it.

7 MR. WEBB: I'm going to object. Lack of evidence.
8 I'm going to object. There's no evidence to support that last
9 statement. Objection.

04:00 10 THE COURT: The government and the defense have their
11 own theories. Ultimately you the jurors are the ones who are
12 the trier -- finders of fact. If your recollection differs from
13 that of the attorney's, it is your recollection that controls.

14 You may continue.

04:00 15 MS. SISKIND: The defendant was taking advantage of
16 the fact that he was never going to get a Form 1099 from a
17 foreign bank, because if the bank wasn't going to tell the IRS
18 about his interest income, then he wasn't going to do it either.

19 I want to say something else about Forms 1099.

04:00 20 Mr. Webb made it seem like it would have been impossible for the
21 defendant to report his interest income to his accountant unless
22 he got a 1099.

23 That's simply not true. Because Vandana Katju came in
24 here and told you about the process that was available for NRI
04:01 25 accountholders to get information about their accounts. She

1 told you that the representative office in New York would field
2 questions from NRI customers in this country, about balances or
3 deposits; she told you that for complicated inquiries, they
4 would contact the bank in India, who would send over these
04:01 5 screen shots that you saw in Exhibits 69 and 71.

6 We also saw at least one e-mail in which the defendant
7 was asking Ankush Tandon, one of the bankers in New York, for
8 information about a CD that was going to mature. So it's clear
9 that the defendant knew how to get information about his account
04:01 10 when he wanted to.

11 Look at Exhibit 38. This is an e-mail from Priti
12 Dhanani, one of the bankers in New York, to the defendant.
13 She's talking about statements regarding his account in India --
14 sorry -- in Jersey. She says, "I refer to your request for a
04:02 15 composite statement of your Jersey investments. I have placed a
16 request with our Jersey Premier Division for your statements,
17 and you shall receive the same shortly at your U.S. mailing
18 address. I have also requested them to send you soft copy of
19 the same on your e-mail address in their records."

04:02 20 He asked for statements; the bank delivered. Whenever
21 he wanted information about his account, those bankers in
22 New York, as Vandana Katju told you, would have been available
23 to help him.

24 So the defendant knew how to get information about his
04:02 25 accounts, about his deposits, about his CDs if he wanted to get

1 information. The defendant stayed on top of his accounts. He
2 personally managed his investments, just like you saw him state
3 in that Texas Energy account application.

04:03 4 So this whole 1099 argument, this whole theory that
5 it's impossible to report his interest income unless he got some
6 magic form, that's a distraction, ladies and gentlemen. The
7 defendant did not need to get a 1099 to know that he was earning
8 interest income.

04:03 9 The defendant also knew that he had foreign accounts
10 at places besides HSBC-India and Jersey. Look at Exhibits 57
11 and 2060. These are the account applications for the Citibank
12 NRI account.

13 Now, Mr. Webb said something to you in his closing
14 argument about how the Citibank CDs in India are not a foreign
04:03 15 account. Is that what you remember the evidence showing, ladies
16 and gentlemen?

17 Take a look back at those two Citibank account
18 applications. They both talk about offshore accounts, about
19 accounts in India. And Ms. Katju told you that Citibank NRI
04:04 20 accounts, just like their counterparts at HSBC are located in
21 India.

22 Ms. Katju told you this, but Mark Miller couldn't. He
23 was asked about whether he knew what NRI stood for, and he
24 didn't know. And Mr. Sullivan asked him during
04:04 25 cross-examination about why he reported the Citibank interest as

1 he would for any other domestic account. Mr. Sullivan asked him
2 if it was just because he assumed that it was a U.S.-based
3 account.

04:04 4 And Mr. Sullivan read back to him some of his grand
5 jury testimony, testimony under oath, without the defendant in
6 the room, about the Citibank Form 1099. Mr. Sullivan asked if
7 he recalled in the grand jury responding to a question if it was
8 fair to say that he just assumed that this was a U.S.-based
9 account, and his answer was "Yes."

04:05 10 Mr. Miller just assumed that the Citibank accounts
11 were not foreign. He didn't know that.

12 But Vandana Katju told you they were foreign accounts,
13 and the evidence shows that the account application show the
14 defendant knew they were foreign accounts too.

04:05 15 Look at that handwritten application in Exhibit 2060.
16 We talked about it with Agent Cook on the stand yesterday. Go
17 to Part C on that form, on page 3. There is that list of
18 countries, none of which were in the United States.

04:05 19 And Dr. Ahuja was directed to check a box next to
20 which city in India he wanted to have his accounts opened with
21 the bank, and he checked New Delhi. He knew that was a foreign
22 account.

04:06 23 And don't forget about all of the letters the
24 defendant signed directing that HSBC transfer his money to Oxus
25 and HDFC and Mann Financial. He was telling the bank to send

1 more than \$1.5 million to these bank and brokerage accounts,
2 which Ramit Bhasin told you were located in India.

3 These accounts have nothing to do with a bank account
4 in New York. They're foreign accounts, foreign bank accounts,
04:06 5 and foreign brokerage accounts, and the defendant knew that.

6 So the evidence in this case establishes beyond a
7 reasonable doubt that the defendant knew he had foreign bank
8 accounts, knew that he had millions of dollars in interest
9 income from those accounts, but didn't report it on his tax
04:06 10 returns.

11 I want to talk to you for a minute about Ramit Bhasin.
12 We heard a lot about that in Mr. Webb's closing argument.
13 Mr. Webb says he testified to get a deal, that he's not
14 credible, that he should be prosecuted.

04:07 15 Well, ladies and gentlemen, this case is not about
16 whether anyone else should be prosecuted. This case is about
17 whether the government can prove beyond a reasonable doubt that
18 the defendant is guilty of the charges in the indictment.

19 It's your job to evaluate Mr. Bhasin's testimony, to
04:07 20 evaluate his credibility, and to decide for yourself whether and
21 how much of his testimony you want to believe. But when you're
22 thinking about whether he was a credible witness, think about
23 all the ways in which his testimony, in which things he said
24 when he sat in that box, how they're corroborated by other
04:07 25 evidence, other documents that you have seen.

1 He told you about the defendant opening a brokerage
2 account at Oxus with a \$1 million investment. That's exactly
3 what Exhibits 3, 4, and 80 show. Letters signed by the
4 defendant transferring money to Oxus.

04:07 5 Mr. Bhasin told you that he invested jointly with the
6 defendant in some commercial real estate at DLF India. That's
7 exactly what Exhibit 2 shows. A letter signed by the defendant
8 transferring money to DLF.

9 Mr. Bhasin told you he helped the defendant withdraw
04:08 10 cash in India. Well, you saw a letter in which the defendant
11 told the bank to give cash to Mr. Bhasin.

12 So Mr. Webb said that Ramit Bhasin is a liar. Well,
13 how can that be, ladies and gentlemen? Much of what he said is
14 supported by documents in black and white signed by the
04:08 15 defendant.

16 And, ladies and gentlemen, don't be distracted by the
17 evidence that you heard yesterday and then this morning about
18 Pebble Beach and the golf course here in Milwaukee. A binder
19 full of golf course records has absolutely nothing to do with
04:08 20 whether the defendant filed false tax returns and willfully
21 failed to file FBARs. Nothing to do with it. It's a
22 distraction. And they don't say anything about whether you
23 should believe Mr. Bhasin.

24 I want to read to you from part of Mr. Bhasin's trial
04:09 25 testimony, a part that Mr. Webb did not put on the screen for

1 you during his closing.

2 Because after the issue was raised on
3 cross-examination about where he was when the conversation about
4 the Citibank 1099 occurred, on cross-examination Mr. Webb asked
04:09 5 him:

6 "If it turns out the records show you were in
7 Milwaukee and not in California, you couldn't have played golf
8 in California; is that correct?"

9 And he said: "That's correct."

04:09 10 So it's not as if he took the stand and maintained
11 with 100 percent certainty he knew exactly where he was standing
12 the moment the defendant said, "I got a 1099." These golf
13 course records say nothing about anything in this case.

14 What Mr. Bhasin was clear on is that the conversation
04:09 15 did occur. On redirect examination I asked Mr. Bhasin whether
16 there was any doubt in his mind that the defendant said, "I
17 received a 1099 from Citibank," and Mr. Bhasin responded: "No,
18 there is no doubt in my mind."

19 I asked him whether there was any doubt that the
04:10 20 conversation occurred in June of 2009, and again he said:
21 "There is no doubt in my mind."

22 Something else there is no doubt about, ladies and
23 gentlemen, is that e-mail with the article from Bloomberg about
24 bank secrecy.

04:10 25 Well, it's true, as Mr. Webb pointed out, Mr. Bhasin

1 pointed out there were a lot of e-mails about financial topics
2 or sports or news between the defendant and Mr. Bhasin. But
3 that e-mail about foreign bank secrecy, that's something
4 entirely different.

04:10 5 This is an e-mail sent between two men, both of whom
6 had undeclared foreign bank accounts. There's no text in that
7 e-mail. They never had any follow-up conversations because they
8 didn't have to. They both knew what it meant. HSBC-India was
9 thinking about turning over the names of accountholders. They
04:11 10 knew that that meant that they would not be able to fly under
11 the radar very much longer, and that their accounts would soon
12 be discovered.

13 You heard during the testimony of Agent Cook about the
14 ways in which evidence was gathered in this case. And Mr. Webb
04:11 15 has now suggested to you, both through his argument and through
16 the testimony of Ronald Braver, that there were other things the
17 government could have done to investigate this case. What this
18 basically boils down to is a difference in strategy, how former
19 Special Agent Braver might have investigated this case has no
04:12 20 bearing on the issues that you have to decide here.

21 The defense is, essentially, speculating about what
22 might be found in foreign bank records. And even though
23 Mr. Braver suggested that there were ways to get evidence from
24 abroad, he didn't say anything about the evidence you actually
04:12 25 have in front of you in this case.

1 You don't need to see bank statements from India to
2 know that the defendant earned interest income. He admitted
3 that when he filed amended tax returns. And you saw other
4 records in this case maintained in this country, letters signed
04:12 5 by the defendant, e-mails from the defendant, account
6 applications signed by the defendant, all establishing that he
7 knew he had foreign bank accounts, and that he knew he was
8 earning interest income.

9 So don't be distracted by all the talk about tax
04:12 10 treaties or letters rogatory or foreign attachés. That has
11 nothing to do with whether the defendant is guilty and whether
12 the government has proven his guilt beyond a reasonable doubt.

13 There is no dispute that the defendant's 2006 through
14 2009 tax returns were false. He amended those returns in 2011,
04:13 15 after he learned, as Agent Cook told you, that he was under
16 criminal investigation. He amended those returns and reported
17 more than \$2 million in additional income.

18 But the defendant also knew those returns were false
19 when he filed them. Because although the defendant's tax
04:13 20 returns undoubtedly are thick, they have a lot of pages, report
21 a lot of information, he wouldn't even need to make it past the
22 very first page of those returns to know that his interest
23 income was not being reported.

24 When you go back to the jury room, take a look at
04:13 25 line 8a on the first page of each return. That's the line where

1 all the interest income from the Schedule B gets totaled up and
2 reported all in one place.

3 For each of the years 2006 through 2009, the defendant
4 would have seen that number and known that it was too low to be
04:14 5 including all of his interest income that he was earning on that
6 millions of dollars he invested at those high interest rates.

7 He knew that the tax returns were not reporting his
8 interest income, but he didn't want to report his income to the
9 IRS. Like Mr. Bhasin, he thought he could get away with it; he
04:14 10 thought if he kept his mouth shut, the IRS wouldn't know, and he
11 could fly under the radar.

12 The evidence has also established that the defendant
13 knew he was required to file the FBARs. First, the defendant
14 signed his tax returns. And the judge will instruct you -- and
04:14 15 you saw the instruction on the screen with Mr. Webb -- that you
16 can consider that signature when deciding whether the defendant
17 had knowledge of the contents of the return.

18 Part of the instruction reads that, "knowledge of the
19 contents of the return may be inferred from the surrounding
04:15 20 facts and circumstances in addition to the signature which on
21 its face is evidence that the signer knew of the contents of the
22 return."

23 He signed those returns; he acknowledged that they
24 were true and complete and accurate, and he acknowledged that he
04:15 25 knew what they contained. What they contained in the 2007

1 through 2009 returns is a statement about the FBAR. Doesn't
2 call it an FBAR. It refers to it by the more technical name,
3 the form number.

4 And the defendant didn't have to go find that form by
04:15 5 himself, like Mr. Webb suggested. That's what he paid a CPA
6 for. And Mr. Miller told you that if the defendant had come to
7 him and said, "I have foreign accounts," Mr. Miller would have
8 investigated the matter further and, if appropriate, filed an
9 FBAR. But he couldn't possibly do that unless his client told
04:16 10 him about the foreign accounts. And because the defendant chose
11 to conceal those accounts from Mr. Miller, no FBARs were filed.

12 Mr. Webb told you there is no evidence that Dr. Ahuja
13 was aware of the FBARs. Well, then, what do you call that
14 agenda from the meeting in December of 2009 that has as a line
04:16 15 item the FBAR reporting requirement? What do you call the tax
16 organizer from December 2009 with that extra color sheet of
17 paper that talks about the FBAR? What do you call the
18 conversation between Mr. Miller and the defendant in August of
19 2009?

04:16 20 He testified that he had a conversation about FBARs.
21 And on his direct examination Mr. Sullivan asked him some
22 questions about that, and he read to him from his grand jury
23 transcript -- again, which was under oath -- and Mr. Miller
24 agreed that he had testified in the grand jury under oath that
04:17 25 he had told the defendant about the FBAR requirement in August

1 of 2009.

2 And Mr. Miller told you that during that conversation
3 the defendant said he would have to follow up about a few
4 accounts and get back to him. But we all know by now, ladies
04:17 5 and gentlemen, the evidence showed that never happened.
6 Mr. Miller told you that Dr. Ahuja never came back to him and
7 said anything about foreign accounts, and no foreign accounts
8 got reported on the 2009 return and no FBARs were filed.

9 Three times in the summer and winter of 2009
04:17 10 Mr. Miller raised the subject of FBARs. He was practically
11 begging the defendant to tell him about the foreign accounts.
12 And still, the defendant concealed those accounts from
13 Mr. Miller. Ladies and gentlemen, that is willfulness.

14 Because the defendant kept his CPA in the dark, no
04:18 15 foreign interest income was reported, the "no" box was checked
16 next to the foreign bank account question on Schedule B, and no
17 FBARs were filed.

18 The government has proven beyond a reasonable doubt
19 that with respect to the charges of filing false tax returns and
04:18 20 failing to file FBARs the defendant acted willfully. He knew
21 what the law required him to do, and he intentionally violated
22 that duty.

23 He knew he had foreign accounts that generated
24 millions of dollars in interest income, but he chose to
04:18 25 deliberately conceal that fact from his accountant. He

1 concealed that fact from his accountant and ultimately from the
2 IRS and hoped he would never get caught.

3 That is why the government is asking you to return the
4 only verdicts in this case that are consistent with the
04:19 5 evidence, which are verdicts of guilty on all charges.

6 FINAL JURY INSTRUCTIONS

7 THE COURT: Members of the jury, you have seen and
8 heard all the evidence and the arguments of the attorneys. Now
9 I will instruct you on the law.

04:19 10 You have two duties as a jury. Your first duty is to
11 decide the facts from the evidence in the case. This is your
12 job, and yours alone.

13 Your second duty is to apply the law that I give you
14 to the facts. You must follow these instructions, even if you
04:20 15 disagree with them.

16 Perform the duties fairly and impartially. Do not
17 allow sympathy, prejudice, fear, or public opinion to influence
18 you. You should not be influenced by any person's race, color,
19 religion, national ancestry, or sex.

04:20 20 Nothing I say now, and nothing I said or did during
21 the trial, is meant to indicate any opinion on my part about
22 what the facts are or about what your verdict should be.

23 The evidence consists of the testimony of the
24 witnesses, the exhibits admitted in evidence, and stipulations.

04:21 25 A stipulation is an agreement between both sides that

1 a person would have given certain testimony.

2 You are to decide whether the testimony of each of the
3 witnesses is truthful and accurate, in part, in whole, or not at
4 all, as well as what weight, if any, you give to the testimony
04:21 5 of each witness.

6 In evaluating the testimony of any witness, you may
7 consider, among other things:

8 The witness's intelligence;

9 The ability and opportunity the witness had to see,
04:22 10 hear, or know the things that the witness testified about;

11 The witness's memory;

12 Any interest, bias, or prejudice the witness may have;

13 The manner of the witness while testifying; and

14 The reasonableness of the witness's testimony in light
04:22 15 of all the evidence in the case.

16 You should use common sense in weighing the evidence
17 and consider the evidence in light of your own observations in
18 life.

19 In our lives, we often look at one fact and conclude
04:22 20 from it that another fact exists. In law we call this
21 "inference." A jury is allowed to make a reasonable inference.
22 I should say, to make reasonable inferences. Any inferences you
23 make must be reasonable and must be based on all of the evidence
24 in the case.

04:23 25 Some of you have heard the phrases "circumstantial

1 evidence" and "direct evidence." Direct evidence is the
2 testimony of someone who claims to have personal knowledge of
3 the commission of a crime which has been charged, such as an
4 eyewitness. Circumstantial evidence is the proof of a series of
04:23 5 facts which tend to show whether the defendant is guilty or not
6 guilty. The law makes no distinction between the weight to be
7 given either direct or circumstantial evidence. You should
8 decide how much weight to give to any evidence. All of the
9 evidence in the case, including the circumstantial evidence,
04:23 10 should be considered by you in reaching your verdict.

11 Certain things are not evidence. I will list them for
12 you:

13 First, testimony and exhibits that I struck from the
14 record, or that I told you to disregard, are not evidence and
04:24 15 must not be considered.

16 Second, anything you may have seen or heard outside
17 the courtroom is not evidence and must be entirely disregarded.
18 Do not consider anything you may have seen or heard outside of
19 court, including anything from the newspaper, television, radio,
04:24 20 the Internet, or any other source. Such reports are not
21 evidence and your verdict must not be influenced in any way by
22 such publicity.

23 Third, questions and objections by the lawyers are not
24 evidence. Attorneys have a duty to object when they believe a
04:24 25 question is improper. You should not be influenced by any

1 objection or by my ruling on it.

2 Fourth, the lawyers' statements to you are not
3 evidence. The purpose of these statements is to discuss the
4 issues and the evidence. If the evidence as you remember it
04:25 5 differs from what the lawyers said, your memory is what counts.

6 Fifth, any notes you have taken during this trial are
7 not evidence. They are only aids to your memory. If you have
8 not taken notes, you should rely on your independent
9 recollection of the evidence and not be unduly influenced by the
04:25 10 notes of other jurors. Notes are not entitled to any greater
11 weight than the recollection or impression of each juror about
12 the evidence.

13 It is proper for any attorney to interview any witness
14 in preparation for trial.

04:26 15 You may find the testimony of one witness or a few
16 witnesses more persuasive than the testimony of a larger number.
17 You need not accept the testimony of the larger number of
18 witnesses.

19 The defendant is presumed to be innocent of each of
04:26 20 the charges. This presumption continues during every stage of
21 the trial and your deliberations on the verdict. It is not
22 overcome unless from all of the evidence in the case you are
23 convinced beyond a reasonable doubt that the defendant is guilty
24 as charged.

04:26 25 The government has the burden of proving the guilt of

1 the defendant beyond a reasonable doubt. This burden stays with
2 the government throughout the case.

3 A defendant is never required to prove his innocence
4 or to produce any evidence at all. The defendant has an
04:27 5 absolute right not to testify. The fact that the defendant did
6 not testify should not be considered by you in any way in
7 arriving at your verdict.

8 You heard evidence of the acts of the defendant other
9 than those charged in the indictment. You may consider this
04:27 10 evidence only on the questions of intent, lack of mistake, and
11 lack of accident. You should consider the evidence only for
12 these limited purposes.

13 You've heard opinion evidence from Mark Miller about
14 the defendant's character. You should consider character
04:27 15 evidence together with and in the same way as all of the other
16 evidence in the case.

17 You've heard evidence that before the trial witnesses
18 made statements that may be inconsistent with the witnesses'
19 testimony here in court. If you find that it is inconsistent,
04:28 20 you may consider the earlier statement in deciding the
21 truthfulness and accuracy of that witness's testimony in this
22 trial. If that statement was made under oath, you may also
23 consider it as evidence of the truth of the matters contained in
24 the prior statement.

04:28 25 The indictment in this case is the formal method of

1 accusing the defendant of a crime and placing him on trial. It
2 is not evidence against the defendant and does not create an
3 inference of guilt. You have been provided -- you will be
4 provided copies of the indictment, and I will note that you will
04:29 5 have written instructions that will read -- you have been
6 provided with copies of the indictment.

7 Counts 1 through 4 charge the defendant with willfully
8 making and subscribing false tax returns, Forms 1040, for the
9 calendar years 2006, Count 1; 2007, Count 2; 2008, Count 3; and
04:29 10 2009, Count 4, by filing tax returns under penalty of perjury
11 with the IRS that did not report income received from, and his
12 financial interest in and signature authority over, financial
13 accounts allegedly located in India and the Bailiwick of Jersey,
14 in violation of Title 26 United States Code Section 7206(1).

04:31 15 Counts 5 through 7 charge the defendant with willfully
16 failing to file with the Commissioner of the IRS Reports of
17 Foreign Bank and Financial Accounts, Forms TD 90-22.1, FBARs,
18 for the calendar years 2007, Count 5; 2008, Count 6; and 2009,
19 Count 7, disclosing that he had a financial interest in, and
04:31 20 signature authority over, at least one financial account
21 allegedly located in India, at HSBC-India that had an aggregate
22 value of more than \$10,000 during calendar years 2007, Count 5;
23 2008, Count 6; and 2009, Count 7, in violation of Title 31
24 United States Code, Sections 5314 and 5322.

25 The defendant has pleaded not guilty to the charges.

1 It is the defendant, Arvind Ahuja's, position that he
2 did not wilfully file false income tax returns by willfully
3 failing to report interest income earned from his HSBC
4 certificate of deposit investments because: HSBC did not send
04:32 5 him 1099 forms stating the interest earned on his certificate of
6 deposit investments and therefore the interest income was not
7 reported on his -- reported to his accountant, Mark Miller, for
8 inclusion on his income tax returns; and there is no evidence
9 that he was aware that HSBC did not send him 1099 forms or that
04:32 10 the interest income earned from his HSBC certificate of deposit
11 investments was not reported on his income tax returns.

12 Additionally, it is Arvind Ahuja's position that he
13 did not willfully fail to disclose on Schedule B, Part III,
14 line 7a of his income tax returns a financial interest in and
04:32 15 signature authority over financial accounts located in India and
16 Jersey because:

17 There is no evidence that he knew it was his legal
18 duty to report his investments at HSBC, Citibank, HDFC, Oxus
19 Fund Management, and MF Global on Schedule B, Part III, line 7a
04:33 20 of his income tax returns;

21 His HSBC certificates of deposit were foreign
22 investments held in a domestic account, which was maintained in
23 the United States, and therefore did not require reporting on
24 Schedule B, Part III, line 7a;

04:33 25 The Citibank certificates of deposit were foreign

1 investments held in a domestic account, which was maintained in
2 the United States, and therefore did not require reporting on
3 Schedule B, Part III, line 7a;

4 He did not have an account at HDFC;

04:34 5 He made foreign investments in but did not have a
6 foreign account at Oxus Fund Management, and therefore he did
7 not have an account to report on Schedule B, Part III, line 7a;

8 And he made foreign investments in, but did not have a
9 foreign account at, MF Global, and therefore he did not have an
04:34 10 account to report on Schedule B, Part III, line 7a.

11 It is Arvind Ahuja's further position that he did not
12 willfully fail to file FBARS disclosing that he had a financial
13 interest in and signature authority over a financial account
14 located in India at HSBC-India because:

04:35 15 There is no evidence that he knew it was his legal
16 duty to file FBARS; and the HSBC certificates of deposits were
17 foreign investments held in a domestic account, which was
18 maintained in the United States, and therefore did not require
19 FBAR reporting.

04:35 20 Counts 1 through 4 of the indictment allege that the
21 defendant filed false individual federal income tax returns for
22 calendar years 2006, Count 1; 2007, Count 2; 2008, Count 3; and
23 2009, Count 4.

24 To sustain each charge that the defendant willfully
04:36 25 made and subscribed a false individual income tax return, the

1 government must prove the following propositions:

2 First, the defendant made or caused to be made the
3 income tax return;

4 Second, the defendant signed the income tax return,
04:36 5 which contained a written declaration that it was made under
6 penalties of perjury;

7 Third, the defendant filed the income tax return or
8 caused the income tax return to be filed with the Internal
9 Revenue Service;

04:36 10 Fourth, the income tax return was false as to a
11 material matter, as charged in the count;

12 And fifth, when the defendant made and signed the tax
13 return, the defendant did so willfully and did not believe that
14 the tax return was true, correct, and complete as to every
04:37 15 material matter.

16 If you find from your consideration of all of the
17 evidence that each of these propositions has been proved beyond
18 a reasonable doubt as to a particular count, then you should
19 find the defendant guilty of that particular count.

04:37 20 If, on the other hand, you find from your
21 consideration of all of the evidence that any of these
22 propositions has not been proved beyond a reasonable doubt as to
23 a particular count, then you should find the defendant not
24 guilty of that particular count.

04:38 25 You may infer and find that a tax return was, in fact,

1 signed by the person whose name appears to be signed on it. You
2 are not required, however, to accept any such inference or to
3 make any such finding.

4 In the case of an electronically filed return, an
04:38 5 electronic signature made in accordance with guidelines
6 published by the Internal Revenue Service is for all purposes
7 the same as the written signature on a paper tax return.

8 A taxpayer's signature on a return does not by itself
9 prove beyond a reasonable doubt the taxpayer's knowledge of the
04:38 10 contents of the return.

11 Knowledge of the contents of the return may be
12 inferred from the surrounding facts and circumstances in
13 addition to the signature, which on its face, is evidence that
14 the signer knows the contents of the return. However, the
04:39 15 government must prove beyond a reasonable doubt that when the
16 taxpayer signed his tax returns he knew they were false as to a
17 material matter.

18 A line on a tax return is a material matter if the
19 information required to be reported on that line is capable of
04:39 20 influencing the correct computation of the amount of tax
21 liability of the defendant or the verification of the accuracy
22 of the return.

23 If you find that the defendant willfully understated
24 the amount of interest income on his individual tax return, and
04:40 25 if you find that the amount of interest income on that return is

1 essential to a correct computation of the amount of taxable
2 income or tax or to the verification of that return, then you
3 may find that the false and fraudulent statements were false as
4 to a material matter.

04:40 5 Counts 1 through 4 of the indictment allege that the
6 defendant committed certain specific acts. The government need
7 not prove that each of the specific acts alleged -- each and
8 every specific act alleged was committed by the defendant.

9 However, the government must prove that the defendant
04:40 10 committed at least one of the specific acts alleged in each
11 count. In order to find that the defendant has proved -- in
12 order to find that the government has proved the defendant
13 committed a specific act, you must unanimously agree on which
14 specific act the defendant committed.

04:41 15 For example, if some of you find that the government
16 has proved beyond a reasonable doubt that the defendant
17 willfully made a material false statement on line 8a of his 2006
18 individual income tax return and the rest of you find that the
19 government has proved beyond a reasonable doubt that the
04:41 20 defendant willfully made a material false statement on line 22
21 of his 2006 individual tax return, then there is no unanimous
22 agreement on which act has been proved and you must find the
23 defendant not guilty of Count 1. On the other hand, if all
24 jurors find that the defendant willfully made a material false
04:42 25 statement on line 8a of his 2006 individual income tax return,

1 then there is unanimous agreement.

2 The word "willfully" means the voluntary and
3 intentional violation of a known legal duty or the purposeful
4 omission to do what the law requires.

04:42 5 In order to prove that the defendant willfully failed
6 to report on lines 8a, 9a, and 22 income received from him in a
7 bank, securities, or other financial account located in India
8 and Jersey -- it should be income received by him in a bank,
9 securities, or financial account located in India and Jersey --
04:43 10 the government must prove that the defendant knew of the legal
11 duty to report on lines 8a, 9a, and 22 income received by him in
12 a bank, securities, or financial account located in India and
13 Jersey and intentionally did not report income on lines 8a, 9a,
14 and 22 received by him from a bank, securities, or other
04:43 15 financial account located in India and Jersey.

16 In order to prove that the defendant willfully failed
17 to report on Schedule B, Part III, line 7a that he had an
18 interest in or a signature or other authority over bank,
19 securities, and other financial accounts located in India and
04:44 20 Jersey, the government must prove that the defendant knew of the
21 legal duty to report on Schedule B, Part III, line 7a that he
22 had an interest in or signature or other authority over
23 securities and other financial accounts located in India and
24 Jersey and intentionally did not report on Schedule B, Part III,
04:44 25 line 7a that he had an interest in or signature or other

1 authority over bank, securities, and other financial accounts
2 located in India and Jersey.

3 Although the government is required to prove beyond a
4 reasonable doubt that the defendant willfully filed a false
04:44 5 document as charged in Counts 1 through 4 of the indictment, the
6 government is not required to prove that any additional tax was
7 due to the government or that the government was deprived of any
8 tax revenues by reason of any filing of any false return.

9 Counts 5 through 7 of the indictment allege that the
04:45 10 defendant knowingly and willfully failed to file with the United
11 States Department of Treasury a report of foreign bank and
12 financial accounts for calendar years 2007, Count 5; 2008,
13 Count 6; and 2009, Count 7.

14 In order for you to find the defendant guilty of each
04:45 15 of these charges, the government must prove, with respect to
16 each count, each of the following four proposition beyond a
17 reasonable doubt:

18 First, that the defendant was a resident or citizen of
19 the United States during the year specified in the count;

04:46 20 Second, that the defendant had a financial interest in
21 or signature or other authority over at least one bank account,
22 securities, or other financial account located in India at
23 HSBC-India during the time period specified in the count, and
24 that account had a balance exceeding \$10,000 in aggregate value
04:46 25 at any time during that time period;

1 Third, the defendant knew he had a legal duty to file
2 a report of foreign bank and financial accounts with the
3 Department of the Treasury;

4 And fourth, the defendant knowingly and willfully
04:46 5 failed to file the report on or before June 30th of the year
6 after the year identified in the count.

7 The word "willfully" means the voluntary and
8 intentional violation of a known legal duty or the purposeful
9 omission to do what the law requires. The defendant acted
04:47 10 willfully if he knew it was his legal duty to file an FBAR and
11 intentionally failed to do so.

12 If you find from your consideration of all the
13 evidence that the government has proved each of these
14 propositions beyond a reasonable doubt as to a particular count,
04:47 15 then you should find the defendant guilty of that count.

16 If, on the other hand, you find from your
17 consideration of all of the evidence that the government has
18 failed to prove any one of these propositions beyond a
19 reasonable doubt as to a particular count, then you should find
04:47 20 the defendant not guilty of that count.

21 U.S. persons have a financial interest in or signature
22 or other authority over one or more bank, securities, or other
23 financial accounts in a foreign country with an aggregate value
24 in excess of \$10,000 are required to file a form called a
04:48 25 "Report of Foreign Bank of Financial Accounts," FBAR, to report

1 the account or accounts to the commissioner of the Internal
2 Revenue Service.

3 U.S. persons with such accounts are required to file
4 an FBAR for each year in which the account exists.

04:48 5 FBARs must be filed with the commissioner of the
6 Internal Revenue Service on or before June 30 of each year with
7 respect to foreign financial accounts exceeding \$10,000
8 maintained during the previous calendar year.

9 For purposes of the charges alleging that the
04:49 10 defendant willfully failed to report on Schedule B, Part III,
11 line 7a that he had a financial interest in or signature
12 authority over bank, securities, and other financial accounts
13 located in a foreign country, India or Jersey, and for the
14 charges that the defendant willfully failed to file an FBAR
04:49 15 disclosing that he had a financial interest in and signature
16 authority over at least one financial account located in a
17 foreign country, India, at HSBC-India, that had an aggregate
18 value of more than \$10,000:

19 "United States persons" means a citizen or resident of
04:49 20 the United States.

21 "Bank account" means a savings account, demand
22 deposit, checking, or other account maintained with a person
23 engaged in the business of banking. The term "other financial
24 account" means an account with a person that is in the business
04:50 25 of accepting deposits as a financial agency. A financial asset

1 can include an investment that is not held in an account.

2 A "financial interest" in a bank or other financial
3 account means an owner of record or holder of legal title,
4 whether the account is maintained for his own benefit or for the
04:50 5 benefit of others. If an account is maintained in the name of
6 more than one person, each United States person in whose name
7 the account is maintained has a financial interest in that
8 account.

9 "Signature or other authority" means the authority of
04:51 10 an individual, alone or in conjunction with another, to control
11 the disposition of money, fund, or other assets held in a
12 financial account by direct communication, whether in writing or
13 otherwise, to the person with whom the financial account is
14 maintained.

04:51 15 A financial account is "located in a foreign country"
16 if the account is physically located and maintained outside the
17 United States. A "foreign country" includes all geographical
18 areas located outside of the United States. A financial account
19 is not "located in a foreign country" if it is maintained with a
04:52 20 financial institution located in the United States. The mere
21 fact that an account may contain holdings or assets of foreign
22 entities does not render the account "foreign."

23 A defendant does not act willfully if he believes in
24 good faith that he is acting within the law or that his actions
04:52 25 comply with the law. Therefore, if the defendant actually

1 believed that what he was doing was in accord with the laws, he
2 cannot be said to have had the criminal intent to willfully
3 subscribe a false tax return or willfully failed to file an
4 FBAR. This is so even if the defendant's belief was not
04:53 5 objectively reasonable, as long as he held the belief in good
6 faith. However, you may consider the reasonableness of the
7 defendant's belief together with all the other evidence in the
8 case in determining whether the defendant held the belief in
9 good faith.

04:53 10 When the word "knowingly" or the phrase "the defendant
11 knew" is used in these instructions, it means the defendant
12 realized what he was doing and was aware of the nature of his
13 conduct and did not act through ignorance, mistake, or accident.
14 Knowledge may be proved by the defendant's conduct and by all
04:53 15 the facts and circumstances surrounding the case.

16 The punishment provided by law for the offenses
17 charged in the indictment is a matter exclusively within the
18 province of the Court. In reaching the impartial verdict, you
19 should never consider what punishment the defendant might
04:54 20 receive if he is convicted of the offenses charged in the
21 indictment.

22 You may consider the punishment that Ramit Bhasin may
23 have received if he had been charged with tax crimes in
24 determining his credibility as a witness. The indictment
04:54 25 charges that the offense was committed "on or about" a certain

1 date. The government must prove that the offense happened
2 reasonably close to that date, but it is not required to prove
3 that the alleged offenses happened on that exact date.

4 Each count of the indictment charges the defendant
04:55 5 with having committed a separate offense. The number of charges
6 is not evidence of guilt and should not influence your decision.
7 Each count and the evidence relating to it should be considered
8 separately, and a separate verdict should be returned as to each
9 count. Your verdict of guilty or not guilty of an offense
04:55 10 charged in one count should not control your decision as to any
11 other count.

12 MR. KIRSCH: Your Honor, may we approach?

13 THE COURT: Yes.

14 (At side bar on the record.)

04:56 15 MR. KIRSCH: Your Honor, I realized as you were
16 reading an instruction, a standard pattern instruction was left
17 out of the instructions. It's Pattern 3.13, and it's the
18 standard "great caution and care" instruction that, I think, is
19 required to be given when a witness testifies with a benefit
04:56 20 from the government.

21 And I didn't want to interrupt the court during the
22 instructions, but I did want to interrupt the court. I felt
23 like you just read the punishment instruction. So I wanted to
24 interrupt because this is the place that it would go, and it's
04:56 25 entirely proper, and I don't think the government deliberately

1 left it out of the instructions. I think it was just an
2 inadvertent --

3 THE COURT: Both sides left it out.

4 MR. KIRSCH: I'm not saying it's anybody's fault. I'm
04:56 5 saying it's a pattern. It's given in every case in the Seventh
6 Circuit.

7 THE COURT: There is something else we need to address
8 as well, and I think it might be appropriate for me to send the
9 jury out so we can get all of this straightened out. Okay?

04:56 10 MR. KIRSCH: That's fine. Yes.

11 THE COURT: Okay?

12 (End of discussion at side bar.)

13 THE COURT: We need to take a short break. So, please
14 leave your notebooks here, return to the jury room, do not
04:57 15 discuss the case, and we will get back to you ASAP.

16 THE BAILIFF: All rise.

17 (Jury out at 4:57 p.m.)

18 THE COURT: Be seated, please.

19 First, we will address the issue raised by Mr. Kirsch.

04:58 20 MR. SULLIVAN: Your Honor, Mr. Kirsch stated that it
21 would be reversible error not to give it. If that's the case --

22 THE COURT: Go ahead.

23 MR. SULLIVAN: -- then the government would not want
24 reversible error. So I'm not sure if it's required to be given
04:58 25 or not.

1 MS. SISKIND: Your Honor, does Your Honor have a
2 better copy of the comments? I'm trying to read the comments to
3 the pattern instruction on Mr. Kirsch's Blackberry, which is not
4 being productive.

04:59 5 THE COURT: The defense is requesting Pattern
6 Instruction 3.13, which was not included in the series of
7 instructions we discussed and the parties agreed the court
8 should give.

9 The instruction -- the committee comments to the
04:59 10 instructions are extensive. And so what I will do is give you a
11 couple of moments to look at them, but -- when a witness is
12 given consideration, this instruction is one that this court
13 does give. And, quite frankly, I did not think about this
14 instruction as we were going through the materials, but I do
05:00 15 note, as discussed earlier in these instructions -- in fact, at
16 Instruction Number 3, the cautions that are given to the jury,
17 which is "urge to consider any bias, prejudice, or interest a
18 witness may have," and that would include considerations that
19 may have been given to a particular witness who might otherwise
05:01 20 have been charged with a crime or given immunity.

21 I will give you a chance to look at this.

22 MR. SULLIVAN: Your Honor, we don't object to the
23 court giving the instruction in an abundance of caution to
24 prevent any reversible error.

05:01 25 THE COURT: Hold on for one moment.

1 (Brief pause.)

2 (Discussion off the record.)

3 THE COURT: The next instruction that I noticed and
4 marked, as I was reading them, appears to have a typo.

05:03 5 Instruction Number 21, line 5, line 4. It says, "income
6 received from him in a bank."

7 MR. KIRSCH: Your Honor, I think I can explain this
8 typo. This typo comes from the Instruction 14, but I agree it's
9 a typo. The way Instruction 14 reads, it -- I agree there's a
05:04 10 typo there. It was -- the language -- well -- I agree that's a
11 typo, Your Honor.

12 THE COURT: It should be "income received by him."

13 MR. KIRSCH: I think you read it correctly. You fixed
14 it.

05:04 15 THE COURT: I fixed it in what I gave to the jury, but
16 I want to see whether or not we can give -- prepare another set
17 of instructions for the jury consistent with the proper
18 language.

19 Does the government see what I'm referring to?

05:04 20 MS. SISKIND: Yes, Your Honor. I see the typo.

21 MR. KIRSCH: It looks like it appears two places.

22 THE COURT: Yes. It has a second line, where it
23 appears as well, and I believe -- it's further down the same
24 paragraph, "received by him from a bank, securities, or other
05:05 25 financial account located in India."

1 Would you agree?

2 MS. SISKIND: Your Honor, there are three instances.

3 Did Your Honor see that?

4 THE COURT: I believe it was further down.

05:05 5 MS. SISKIND: After each time the line numbers appear
6 in the first paragraph.

7 THE COURT: Okay. We'll make the corrections. And I
8 did note something very minor. In Instruction 23, line 6 from
9 the bottom has a double period. It's a minor thing.

05:06 10 And Instruction Number 25, line 4, it should say "file
11 an FBAR" instead of "file an FBARs."

12 Would you agree?

13 MS. SISKIND: Yes, Your Honor.

14 MR. KIRSCH: Yes, Your Honor.

05:07 15 THE COURT: All right. What I will do is -- let me
16 see where we were.

17 MR. KIRSCH: We had just finished Number 30,
18 Your Honor.

19 THE COURT: We will -- I will repeat Number 30. I
05:07 20 will go through the balance of the instruction. I will give
21 them this cautionary instruction. I will advise them that I
22 will not provide them -- I may -- I'm going to see if I can get
23 this copied.

24 MR. KIRSCH: Your Honor, I guess, could I just suggest
05:08 25 we insert the new instruction as Number 31 and then just

1 renumber 31 through -- did you just want to renumber 31 through
2 34 as 32 through --

3 THE COURT: I'm looking at things logistically.

4 MR. KIRSCH: Oh, yes.

05:08 5 THE COURT: And my assistant, who ordinarily does
6 this, is gone. And I'm trying to figure out how much time --
7 how much time it will take to redo these. And considering the
8 fact that the jury is not going to stay beyond 6:00 o'clock, we
9 will complete the oral instructions and dismiss the jury and
05:09 10 have them deliberate tomorrow morning.

11 MR. WEBB: That's fine, Your Honor.

12 THE COURT: All right. We will then be able to
13 make -- finalize the copies for the jury before they begin
14 deliberations tomorrow morning. And you'll have a chance to
05:09 15 flyspeck the final, final copy before we give it to the jury.

16 MR. WEBB: We'll stay up all night and make sure we do
17 that, Judge.

18 THE COURT: Don't stay up all night.

19 MR. SULLIVAN: The government will not be staying up
05:09 20 all night.

21 THE COURT: All right. Please bring in the jury.

22 (Jury in at 5:09 p.m.)

23 THE BAILIFF: Please be seated.

24 THE COURT: Members of the jury, each count of the
05:10 25 indictment charges the defendant with having committed a

1 separate offense. The number of charges is not evidence of
2 guilt and should not influence your decision. Each count and
3 the evidence relating to it should be considered separately, and
4 a separate verdict should be returned as to each count. Your
05:10 5 verdict of guilty or not guilty of an offense charged in one
6 count should not control your decision as to any other count.

7 The indictment which you will have will not be read at
8 this time, but you will have it in your hands in the jury room.

9 Please note that upon retiring to the jury room,
05:11 10 select one of your number as your foreperson. The foreperson
11 will preside over your deliberations and will be your
12 representative here in court.

13 Forms of verdict have been prepared for you.

14 And I will read these forms to you, but before I do,
05:11 15 please note that you've heard testimony from Ramit Bhasin who
16 received benefits from the government in connection with this
17 case. You may consider his testimony -- you may give his
18 testimony such weight as you feel it deserves, keeping in mind
19 that it must be considered with caution and great care.

05:12 20 Considering the time of day, I am going to terminate
21 my instructions at this time and release you for the evening.

22 Before I begin tomorrow morning -- no. I'm going to
23 go forward, and this is what I'm going to do.

24 I will release the alternate jurors, and the
05:13 25 alternates need not return tomorrow morning. However, the

1 alternate jurors should remain available, and the bailiff will
2 get your contact information, and you should stand by and be
3 available to deliberate in this case if it becomes necessary for
4 one or both of you to serve as jurors in this matter.

05:13 5 Further note that if it becomes necessary for an
6 alternate to commence deliberations, deliberations must begin
7 anew. In other words, the alternate has to participate in full
8 deliberations with respect to any verdict in this case.

9 Therefore, when you retire to the jury room after the
05:14 10 alternates have been released and you have returned here
11 tomorrow morning, you should take the forms. And, when you have
12 reached unanimous agreement on the verdict, your foreperson will
13 fill in, date, and sign the appropriate form.

14 The verdict form reads: "United States of America vs.
05:15 15 Arvind Ahuja, Case No. 12-CR-35 (sic)."

16 Verdict form:

17 "We, the jury, having been duly impaneled and sworn
18 return the following verdicts."

19 Count 1, has paren, "willfully making and subscribing
05:15 20 a false tax return for calendar year 2006."

21 There's a line for not guilty, followed by a line for
22 not guilty (sic). Your unanimous decision with regard to Count
23 1 should be inserted there.

24 Subsequently, there is a place for your determination
05:15 25 with regard to Count 2, "willfully making and subscribing a

1 false tax return for calendar year 2007."

2 Next is Count 3, "willfully making and subscribing a
3 false tax return for calendar year 2008."

4 Followed by Count 4, "willfully making and subscribing
05:16 5 a false tax return for calendar year 2009."

6 Count 5, "willfully -- willful failure to file an FBAR
7 for calendar year 2007."

8 Count 6, "willful failure to file an FBAR for calendar
9 year 2008."

05:16 10 Count 7, "willful failure to file an FBAR for calendar
11 year 2009."

12 Your verdict, as I said, should be inserted on the
13 appropriate line, and the foreperson should sign and date the
14 verdict.

05:17 15 Now, I do not anticipate that you will need to
16 communicate with me, but if you do, however, the only proper way
17 is in writing signed by the foreperson, or, if he or she is
18 unwilling to do so, by some other person and given to the
19 marshal.

05:17 20 During your deliberations, you must not communicate
21 with or provide any information to anyone by any means about
22 this case. You may not use any electronic device or media, such
23 as telephone, cell phone, smartphone, iPhone, Blackberry, or
24 computer, the Internet, any Internet service, or any text or
05:18 25 instant messaging service, or any Internet chat room, blog, or

1 website such as Facebook, Myspace, LinkedIn, You Tube, or
2 Twitter, to communicate with anyone any information about this
3 case or to conduct any research about this case until I accept
4 your verdict.

05:18 5 The verdict must represent the considered judgment of
6 each juror. Your verdict as to each count, whether it be guilty
7 or not guilty, must be unanimous.

8 You should make every reasonable effort to reach a
9 verdict on each count. In doing so, you should consult with one
05:19 10 another, express your own views, and listen to the opinions of
11 your fellow jurors. Discuss your differences with an open mind.
12 Do not hesitate to re-examine your own views and change your
13 opinion if you come to believe it is wrong. But you should not
14 surrender your honest beliefs about the weight or effect of
05:19 15 evidence solely because of the opinions of your fellow jurors or
16 for the purpose of returning a unanimous verdict.

17 The 12 of you should give fair and equal consideration
18 to all of the evidence and deliberate with a goal of reaching an
19 agreement which is consistent with the individual judgment of
05:19 20 each juror.

21 You are impartial judges of the facts. Your sole
22 interest is to determine whether the government has proved its
23 case beyond a reasonable doubt.

24 Please approach.

05:19 25 (At side bar on the record.)

1 THE COURT: Is there anything further that the
2 government believes we need to address before releasing the
3 jury?

4 MS. SISKIND: No, Your Honor.

05:20 5 THE COURT: Are there any corrective instructions that
6 you believe the court needs to deliver before the jury commences
7 deliberation tomorrow?

8 MS. SISKIND: No, Your Honor.

9 THE COURT: Same question of the defense?

05:20 10 MR. WEBB: Same answers.

11 THE COURT: Very well. I will wait until tomorrow
12 morning to swear the bailiff, and we will give you the
13 instructions before the jury is given the materials. You'll
14 have to review the materials that go into the jury room just to
05:21 15 ensure that they are in proper order.

16 I did note that when the defense was showing some of
17 the exhibits, among the exhibits was a check from the US Bank,
18 which had the routing number of US Bank on it as well as the
19 account number at the bottom.

05:21 20 MR. KIRSCH: That's not going back, Your Honor.

21 THE COURT: Okay.

22 MR. KIRSCH: I think that was the front and back of
23 the check.

24 THE COURT: No. It was just the front --

05:21 25 MR. KIRSCH: Okay.

1 THE COURT: -- of Dr. Ahuja's US Bank check and with
2 the routing number at the bottom and the account number.

3 MR. KIRSCH: I think that was a government's exhibit,
4 and I think you guys had yours redacted, and we just hadn't
05:21 5 redacted ours on that slide.

6 THE COURT: I also noted several other exhibits that
7 had Social Security numbers -- full Social Security numbers.
8 And I believe the defense showed those during closings as well.

9 MR. WEBB: And I think we had earlier indicated we
05:22 10 were waiving that issue because we wanted to show that he was
11 not trying to conceal his identity.

12 THE COURT: And also -- but are you -- off the record.

13 (Discussion off the record.)

14 (End of discussion at side bar.)

05:25 15 THE COURT: At this time the Court is releasing Jurors
16 36 and 37. Do you recall your numbers?

17 As I said earlier, you are not required to return
18 tomorrow morning with the rest of the jury pool. Nonetheless,
19 you are part of this case, and we will treat you as such if it
05:26 20 becomes necessary for you to return to render service in this
21 matter. The parties thank you for your attention, as they
22 indicated during their closing arguments, and I add my thanks to
23 what they have said.

24 With that, you are released at this time and you
05:26 25 should turn your notebooks in to the bailiff. Your notebooks

1 will remain intact and they will be placed under lock and key
2 until a verdict is reached in this case or you are called back
3 into service as a juror in this matter.

4 Would the courtroom please stand as these jurors
05:27 5 depart.

6 (Alternates discharged.)

7 THE COURT: Please be seated.

8 For the remainder of you, I do want to alert you to
9 several different things.

05:27 10 The first is: In the jury room there is a green
11 button next to the cooler. You can use that to alert us if you
12 have a verdict or a question that needs to be responded to. The
13 parties will not be sitting in the courtroom as you deliberate;
14 therefore, do not expect instantaneous responses to any question
05:28 15 that may be raised. It will be necessary for us to contact the
16 parties and have them come to the courtroom and they may not be
17 next door. So there may be some considerable delay between any
18 question or questions that you have -- I assume there will be
19 very few, but if there are inquiries by you we will try to
05:28 20 address them in due course, and the fact that we don't respond
21 immediately does not mean that we are ignoring your concerns.

22 Additionally, I mentioned early on that you cannot
23 deliberate if someone is away from the table. Therefore, if
24 someone is out for a smoke break or is otherwise not able to be
05:29 25 at the table, your deliberations should come to a halt until all

1 12 jurors are at the table discussing the matters.

2 I do also ask that you read through the instructions
3 before you begin your deliberations tomorrow. I will not give
4 you the instructions at this time; I have to do some tweaking to
05:29 5 a couple of typos that were discovered during the course of my
6 reading and as a result of things that the parties have brought
7 to my attention. Hence, I do want you to know that once you
8 arrive here tomorrow morning we will let you know when you can
9 commence your deliberations.

05:29 10 With that, as soon as our bailiff returns you can go
11 to the jury room and leave your notebooks with him and he will
12 make sure that you can get out of the building. It's now 5:30,
13 so it is likely that the front doors are locked and you will
14 have to exit the building on the east side.

05:30 15 Is there anything the parties wish me to address at
16 side bar before the jury leaves?

17 MR. WEBB: No, Your Honor.

18 MS. SISKIND: No, Your Honor.

19 THE COURT: All right. Let me check to see whether or
05:30 20 not the bailiff is in the jury room. If not, I will take care
21 of those responsibilities.

22 (Brief pause.)

23 THE COURT: Here he is.

24 MS. JOHNSON: Your Honor, could you instruct them on a
05:31 25 report time for tomorrow?

1 THE COURT: I just told them 8:30, and he will
2 reiterate it in the back. Mr. Hill?

3 THE BAILIFF: Okay.

4 (Jury out at 5:31 p.m.)

05:31 5 THE COURT: Please be seated. I would ask that the
6 attorneys remain for a little while and review the exhibits
7 tonight so that we don't have a delay tomorrow morning. I do
8 have a law clerk here who can assist you if necessary, but I
9 would like for all the exhibits to be ready to go tomorrow
05:32 10 morning so that we don't have any unnecessary delay.

11 Is there anything else?

12 MR. KIRSCH: Can we leave them here tonight once we
13 verify them, just leave them?

14 THE COURT: Yes. The courtroom will be locked.

05:32 15 MR. KIRSCH: Perfect.

16 THE COURT: No one will be coming in except our
17 cleaning crew. All right?

18 MS. SISKIND: Your Honor, should we report here in the
19 morning at 8:30 as well?

05:32 20 THE COURT: I do want you to come in at 8:30 just for
21 a short while to look over a final set of instructions and to
22 verify whether or not there are any materials that need any
23 special attention. I ask that you flyspeck the exhibits and
24 verify what goes in so that we don't have an issue down the
05:33 25 line, particularly with respect to something that was not

1 admitted or something that should have been redacted being
2 viewed by the jury. I don't want this case to be upset in any
3 way by some materials that have not been appropriately viewed or
4 were, in fact, sent into the jury because of failure on the part
5 of someone to look closely at the materials. We've had too many
6 instances of stuff like that as a lawyer and as a person on the
7 bench. All right?

8 Thank you greatly. I'll see you in the morning.

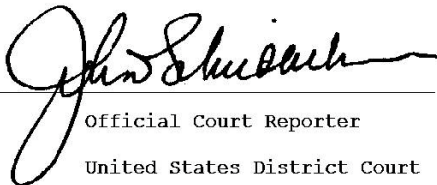
9 (Trial adjourned for the day at 5:33 p.m.)

10 * * *

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 21st day of August, 2012
11 Milwaukee, Wisconsin.

12 
13 _____
14 Official Court Reporter
United States District Court

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